S. HRG. 98-354

INTERMODAL TRANSPORTATION COORDINATION

HEARING

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

SPECIAL HEARING

Nondepartmental Witnesses
Department of Transportation
Department of Agriculture

Printed for the use of the Committee on Appropriations

U.S. GOVERNMENT PRINTING OFFICE
22-742 O WASHINGTON : 1983

S181-43

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INTERMODAL TRANSPORTATION COORDINATION

THURSDAY, MARCH 31, 1983

U.S. SENATE,
SUBCOMMITTEE ON TRANSPORTATION AND RELATED AGENCIES,
COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 10 a.m., in room SD–138, Dirksen Senate Office Building, Hon. Mark Andrews (chairman) presiding.

Present: Senator Mark Andrews.

NONDEPARTMENTAL WITNESSES

OPENING STATEMENT OF SENATOR ANDREWS

Senator ANDREWS. The subcommittee will come to order.

It is an interesting morning. When I drove to work this morning I came by Brother Forbes with his hot air balloon looking down on the Capitol that is generally filled with hot air. Right now during the recess, of course, there are not too many of my colleagues around. Maybe he has to substitute his balloon with hot air for what generally goes on up here on the Hill.

It is great to have you here. This is probably the first time in a number of years that the railroads, the trucks, and barge lines are appearing together as a panel before a committee of the Congress. The fact that it has been such a long time probably says a great deal to all of us about how Congress is organized or fails to be organized to handle transportation legislation.

We do it in bits and pieces. We keep getting hung up. We maybe miss out on what we ought to be doing for the shippers and consumers. That is the reason we wanted to get you together this morning.

Certainly those of us on the Appropriations Committee are aware of the tariff questions in congressional committees, but my colleagues on the subcommittee have mentioned time and time again that we are not doing what we should be doing for the voters back home and taxpayers if we are not concerned about the funding that goes to all of these various functions, regulatory agencies and the rest of our transportation establishment.

In our responsibility for funding these various agencies we have the concurrent responsibility and opportunity to find out just whether they are moving in the right direction, whether some of these moneys would be better off cut back or whether they need additional funds to move

in the proper direction to expedite a better transportation system for our country.

DEREGULATION OF TRANSPORTATION

As you know, transportation issues were very much in the forefront during the closing days of the 97th Congress. With the attention of the Congress and the Nation focused on repairing the Nation's transportation infrastructure, it is easy to overlook what I believe is one of the most far-reaching trends in transportation today: That is increasing consolidation of transportation services while we gallop ever closer to complete deregulation of transportation.

If in fact we are going to totally deregulate transportation, then do we really need all of these agencies that are supposed to handle the regulation of transportation, or do we, in fact, need a whole new agency set up to perhaps regulate transportation?

Sometimes you wonder if this new agency might not, if it is not to regulate, be just to provide a safe harbor for a group of overaged assorted political hacks. We find that a lot of that is going on in various sections of the Government, not just transportation.

The impetus for the creation of total transporatation companies can be traced almost exclusively to the transportation deregulation legislation passed by the Congress in 1978 and 1980. These laws have brought about a dramatic restructuring of the organization, route structures and pricing practices of our Nation's transportation systems.

Today, airlines are buying trucking companies. Trucking companies are buying airfreight forwarders. Airfreight forwarders are buying airlines. Ocean shipping lines own trucking companies. And railroads are buying everything in sight as legal and regulatory barriers to intermodal ownership fall.

The new orientation of Federal transportation policy seems to be based on the perception that public interest and private profit are wholly consistent, and that decentralized private decisionmaking will respond equitably to both consumer needs and carrier needs. Personally, I cannot accept this postulation on faith alone, without full inquiry and investigation.

Members of our subcommittee feel exactly that same way. When we had Secretary Dole appear before us, and I speak only for the subcommittee, I think it ought to be pointed out that we were looking at the situation of the airlines, the situation where the airlines are charging four to five to six times as much per mile, sometimes 15 to 20 times as much per mile, for short flight segments where they have captive customers than they are on the long haul.

That is discriminatory. That is not what deregulation was meant to bring about.

MOVE BACK TOWARD REREGULATION

On this subcommittee, as you know, we have a number of concerned Senators. When we got into the question of do we need to move back toward reregulation or is this deregulation working, Senators Stennis, D'Amato, and Byrd all joined in their concern and their feeling that maybe we have to move back toward some form of reregulation.

I don't know. Hopefully today we will find some of those answers. I think we have to realize that railroad deregulation has made it ridiculously simple for a railroad to abandon branchlines just about wherever they want to, without concern for the impact on grain shippers, country elevators, and the many other concerns in rural parts of the country which are dependent upon rail freight movement.

What indeed happened to the captive shipper under this type of total deregulation? What protection is there for that company at the end of the line and for that company's customers? Or is there a need to be concerned about this?

I think we have to recognize there are also buses, trucks, barges, and ships, it seems as though if it moves, we are going to deregulate it.

Our system has evolved in such a way that the modes both compete with and complement each other. Competition is important because it helps promote efficiency. But competition run amuck can lead to predation and monopoly. Modes must also complement one another—few are capable alone of supplying the complete range of services required by the market.

The need for balance becomes more apparent when transportation is viewed in terms of its three functions of goods collection, line haul, and distribution. In freight shipments, many goods are collected by truck and taken to the appropriate terminal for line-haul movement by rail or water.

At the other end of the movement, they are again frequently distributed to their ultimate consignees by truck. More than 13 million ton-miles of freight are delivered daily to rail or water terminals by truck.

This is certainly one of the overwhelming arguments for intermodality.

FEDERAL ROLE IN POLICY

So what about the Federal Role? Perhaps the most serious defect of our transportation policy—to the extent that we have one at all—has been the neglect of the effects of governmental assistance to one form of transport upon other forms.

If we concentrate our assistance to one section of the transportation industry, do we play it fair with other segments? Even more important, do we play it fair with the consuming public?

I have become increasingly concerned that we may be spending money to perpetuate an antiquated array of disjointed units which never quite come together to make up a system.

This committee's responsibility, as it is involved in the funding of all facets of transportation the Federal Government has under budget resolution, is to husband those dollars. If we can save dollars in unnecessary regulation or if we can save dollars from unnecessary duplication, those dollars can be used to do other things that are much needed in this complicated economy of today or, perhaps even better, can be used to reduce those awful out-year deficits that cause the horrendous interest rates that are impacting on working men and women and businessmen and transportation companies as well.

I wonder if our recent display of deregulatory spasms isn't just a symptom of our sensing the problem, but not knowing what to do about it. So we deregulate and stand ready to point fingers at the private sector should things begin to go sour. It seems to me that our commitment to the general public to act responsibly should run just a bit deeper than that.

I am open minded at this point. I think we have to realize that we stand today on the brink of total deregulation; but where we are going to be a decade from now, what questions we are going to ask a decade from now about the wisdom of these steps are some of the questions which if we can anticipate them today, will save ourselves a lot of trouble down the line.

In our budget hearings with each of the transportation agencies, we have heard all kinds of thrashing about, vagueness, blue-sky promises and requests for funds to deal with cross-cutting issues affecting more than one mode. As a result, a number of questions have arisen in the minds of those of us who serve on this panel responsible for that transportation funding.

MANY UNANSWERED QUESTIONS

The questions are simply these. What it comes down to is, are we so busy trying to make a "mesh" of things that we simply make a mess? What should the Federal role in intermodal coordination be? Can the marketplace be relied upon? Or, do we need something more than marketplace direction?

Are we recreating the problems which gave rise to Federal regulations in the first place? Are we turning the page back to 100 years ago or 50 years ago when events cried out for Federal regulation and will we end up with even more regulation in the long run in our attempt to deregulate at the present time?

Should we allow intermodal ownership? Are we seeing too much deregulation all at once? Should we wait and see what happens before going ahead with more deregulation, or must we finish the deregulatory job quickly in order to allow it to work properly?

These are some of the issues we hope to explore this morning.

INTRODUCTION OF WITNESSES

We are pleased to have with us William Dempsey, president, Association of American Railroads; John Creedy, president, Water Transport Association; Edward Kiley, senior vice president, American Trucking Associations; Charles Swinburn, deputy assistant secretary for policy, Department of Transportation; Martin (Buzz) Fitzpatrick, Director, Office of Transportation, U.S. Department of Agiculture; and James Mann, director, Transportation Planning and Policy, Quaker Oats Company (GMA), and given today's concern about cost of living and high cost of food, we are very happy to have him here to represent the shipper, in effect speaking for the consumer because as the shippers can lower their cost, so can the consuming public benefit.

Certainly we want to explore these things: I want to find out what the challenges are of intermodality. I want to find out what the opportunities are of intermodality. We also want to find out what the negatives are, and we want to find out where we ought to be expending a little bit more money in these Government regulatory agencies or where we ought to be cutting back and what research programs?

We had a long discussion with the Department of Transportation, the Office of the Secretary, on the new types of studies that they put in place to advise the Secretary and we find that they have doubled the amount of research to advise this new Secretary over the amount of research that they had to advise the old Secretary. Now do we need more of this research?

We are talking about millions of dollars' worth of research money, about $7 million. You know, to taxpayers and to someone out in some of the smaller States this $7 million seems like a lot of money. In terms of the overall Federal budget it might not seem to be too much, but if we are, in fact, spending taxpayers' money to investigate how to educate and train the Secretary of Transportation and to do a whole host of the other things, how much do we need?

Should we do more? Is that where we have to get our input from? I suspect we can get a whale of a lot more input from this table of experts that I am looking at.

We appreciate again your being here. The full text of your prepared statements, of course, will be included in the record. You can summarize them, of course.

We would like to have you testify as a panel. Since I possess the gavel, I can ride herd if one form of transportation jumps to the throat of the other or if the shippers begin to complain about what the transportation companies are doing or if the representative of the Department of Transportation becomes, shall we say, bullied by the people that his Department is supposed to regulate.

We can maintain order, but I am here to learn and the record is open for the purpose of providing facts for us to take a look at spending policies down the line.

I would like to start on the left for no other reason than that is the way we generally start. I think it is fitting that Mr. Mann, representing shippers, who sits on the left should start off. If you would share, Jim, with us some of your thoughts, then we will turn it over to Mr. Creedy and go down the line and provide the opportunity for interaction during the discussion as well as afterward.

QUAKER OATS CO. (GMA)

STATEMENT OF JAMES MANN, DIRECTOR, TRANSPORTATION PLANNING AND POLICY

Mr. MANN. My name is James R. Mann. I am director, transportation planning and policy, U.S. Grocery Products, the Quaker Oats Co., Merchandise Mart, Chicago, Ill., and interested, of course, in consumer grocery prices. I would be remiss if, working for Quaker, I did not mention oatmeal is only 5 cents a serving.

I have been employed by my company for 29 years in various transportation capacities including general transportation manager, and director of transportation, prior to assuming my present position 1 year ago.

I am a member of the Distribution/Transportation Committee of the Grocery Manufacturers of America, Inc., (GMA) and was chairman of the GMA Traffic Committee in 1975–77.

Because there was not sufficient time prior to this hearing to conduct a formal poll of our complete committee as a basis for developing a GMA position, my remarks today are only on behalf of Quaker. I did, however, have telephone conversations with several of our members and their views are consistent with mine in this area.

I understand the purpose of the hearing today is to discuss intermodal transportation, namely:

Where we are and how we got here;

Any problems or impediments to the use and development of the full productivity potential of intermodal transportation;

What the private sector is doing to addresss these issues; and

What, if any, role should the Federal Government play in resolving intermodal problems.

Not to get into commercials, but to say where I am coming from in the transportation sense, the company I represent produces a variety of grocery products including hot and ready-to-eat cereals, pancake flour, table syrup, corn flour, meal and grits, granola bars, and pet foods.

Products are made at five human food and four pet food plants and distributed, for the most part, to our customers throughout the United States, the chain and wholesale grocers, through 11 strategically located distribution centers.

We also export grocery products from plants in the United States to Puerto Rico, the Middle East, Asia, and the Pacific.

MEANS OF SHIPPING PRODUCTS

With that little bit of background, let me add, in the shipment of our products, we utilize rail carload, over-the-road motor carrier, mainly in truckload quantities, trailer-on-flat-car, and containers. During 1982 we made approximately 50,000 carload, 30,000 truckload, 2,000 TOFC and 300 container shipments of our grocery products.

We are seeing a shift in our business away from rail box carloads toward truckload and TOFC modes. We attribute this to two things; economic deregulation of motor carrier and piggyback and the intense competition currently available for traffic.

I would say at this point that in my opinion the transportation industry is proceeding along the lines of our basic expectations of free market determination of prices and service.

For many years Quaker made little or no use of trailer-on-flat-car. Box car, almost without exception, was the low cost mode. If emergency shipments were required, we shipped by over-the-road truck to obtain the needed service. However, this all changed with the advent of TOFC deregulation by the Interstate Commerce Commission, and the Motor

Carrier and Staggers Rail Acts opening the door to new competition and pricing flexibility.

As stated, Quaker's use of TOFC was some 2,000 trailers in 1982; we expect this to increase to 5,000 piggyback shipments in 1983, with a continuing growth in the future. In my opinion, we are really just starting to see and appreciate the impact of this new deregulated environment on intermodal shipments.

Carriers are actively developing new equipment, for example, Bi Modal's Road Railer, Santa Fe's Fuel Foiler, and Trailer Train's and ITEL's designs and modifications of flatcars to accommodate larger trailers.

In other words, at this point in time, I think the industry is digesting the new scheme of things. While carrier interests represented here today may express other points of view, it is not apparent to me that new or further Federal action or support at this time is necessary to encourage or assure the realization of maximum possible intermodal efficiencies.

AREAS OF CONCERN

Having said that, there are, however, several areas of concern which should be watched, and possibly require some type of future Government attention.

First of all, we have much support and feel that the Congress did the right thing in enacting and passing the Surface Transportation Assistance Act of 1982 and the DOT Appropriations Act of 1982 insofar as increasing and incurring national uniformity of vehicle sizes and weights.

Many products of grocery manufacturers are comparatively lightweight and will "cube out" before they exceed maximum weights. The increase in length to 58 feet and width to 102 inches will have a beneficial effect on the unit cost of transportation of these products and will be ultimately to the benefit of consumers.

A concern for both over-the-road and TOFC shipments is the manner in which States, such as Illinois, will permit vehicles of this size reasonable access to our plants, distribution centers, and customers.

As I understand it, under the terms of the STAA of 1982, the Department of Transportation must make an initial determination of qualifying Federal aid primary system highways by April 6, 1983, and a final determination by October 3, 1983. I am sure that can be corrected if that is not the case or that is changed.

States presumably will have until October 1, 1983, to bring their laws into compliance with the new limitations and to identify either specifically, or by some guidelines, tributary routes over which the larger vehicles may travel to reach the Federal highways.

While not recommending any governmental action at this time on the matter, there may be further attention needed after we see how the access routes are delineated.

LOWER TOFC RATES

Another point is that many railroads currently offer lower TOFC rates to so-called third parties, for example, shippers' agents, associations, and freight forwarders, than to the actual shippers or beneficial owners. We have no quarrel with this where economically justified, but believe we, as a shipper, are entitled to the same level of rates when we tender sufficient volumes under similar circumstances.

There is currently a difference of opinion among railroads as to the efficacy of this retail/wholesale ratemaking practice. Chessie, for example, offers door-to-door service to shippers, at a rate comparable to that available from a third party. Again, the shipper's agency type.

Interestingly, the Seaboard System, also a unit of CSX Corporation has so far opted to wholesale their TOFC business through third parties.

You have, finally, by contrast, Conrail which is on the other end completely; all their piggyback business is handled by third parties rather than directly with the shipper. I think this will all shake out in due course, based on commercial consideration.

It is a difference in strategy, difference in approach and a very heated subject as to just what is the most efficient way to handle it. Again, we do not suggest Government action now, but identify the treatment of shippers vis-a-vis third parties as a possible future area of complaint against unlawful discrimination.

RAILROAD-OWNED TRUCKLINES

Finally, railroad-owned trucklines, are deregulated insofar as the over-the-road portion of intermodal rates are concerned because railroad TOFC rates are deregulated.

This currently is not the case for a for-hire motor carrier used to deliver or receive freight from a TOFC ramp. It must publish its rates and observe statutory notice. As a matter of equity, its rates for intermodal moves should be deregulated, as is the case with railroad-owned motor carriers.

CHANGING INTERMODAL ENVIRONMENT

It is obvious the whole intermodal environment is changing, brought about by deregulation and aggressive marketing by the railroads and motor carriers involved. Liberalization and standardization of truck weight/length/width dimensions will be significant not only for over-the-road traffic, but must be considered in future intermodal equipment development and pricing.

It is Quaker's position, which I believe is shared by many others of GMA, that no further remedial action by the Federal Government is required at this time. By the same token, as the carriers and the marketplace react to these new opportunities, problems may arise which would be appropriate for the public sector to address.

Thank you very much for the opportunity to share my views with you this morning.

PREPARED STATEMENT

Senator ANDREWS. Thank you very much, Mr. Mann. Your prepared statement will be inserted in the record at this point.

[The statement follows:]

STATEMENT OF JAMES R. MANN

My name is James R. Mann. I am Director, Transportation Planning and Policy, U.S. Grocery Products, The Quaker Oats Company, Merchandise Mart, Chicago, Illinois 60654. I have been employed by my company for 29 years in various transportation capacities including General Transportation Manager, and Director, Transportation prior to assuming my present position one year ago. I am a member of the Distribution/Transportation Committee of the Grocery Manufacturers of America, Inc. (G.M.A.) and was chairman of the GMA Traffic Committee in 1975-77. Because there was not sufficient time prior to this hearing to conduct a formal poll of our complete committee as a basis for developing a GMA position, my remarks today are only on behalf of Quaker. I did, however, have telephone conversations with several of our members and their views are consistent with mine in this area.

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- where we are and how we got here;
- any problems or impediments to the use and development of the full productivity potential of intermodal transportation;
- what the private sector is doing to address these issues; and
- what, if any, role should the federal government play in resolving intermodal problems.

Interest of The Quaker Oats Company

The Quaker Oats Company produces a variety of grocery products including hot and ready to eat cereals, pancake flour, table syrup, corn flour, meal and grits, granola bars and pet foods. Products are made at five human foods and four pet foods plants and distributed, for the most part, to our customers throughout the United States, the chain and wholesale grocers, through eleven strategically located distribution centers. We also export grocery products from plants in the United States to Puerto Rico, the Middle East, Asia and the Pacific.

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Where We Are and How We Got Here

We are seeing a shift in our business away from rail box carloads toward truckload and TOFC modes. We attribute this to economic deregulation and intense competition for available traffic. In my opinion, the transportation industry is proceeding along the lines of our basic expectations of free market determination of prices and service.

For many years Quaker made little or no use of trailer-on-flat-car. Box car, almost without exception, was the low cost mode. If emergency shipments were required, we shipped by over-the-road truck to obtain the needed service. However, this all changed with the advent of TOFC deregulation by the Interstate Commerce Commission, and the Motor Carrier and Staggers Rail Acts opening the door to new competition and pricing flexibility. As stated, Quaker's use of TOFC was some 2,000 trailers in 1982; we expect this to increase to 5,000 piggy-back shipments in 1983, with a continuing growth in the future. In my opinion, we are really just starting to see and appreciate the impact of this new deregulated environment on intermodal shipments. Carriers are actively developing new equipment, e.g. Bi Modal's Road Railer, Santa Fe's Fuel Foiler, and Trailer Train's and ITEL's designs and modifications of flatcars to accommodate larger trailers.

In other words, at this point in time, I think the industry is digesting the new scheme of things. While carrier interests represented here today may express other points of view, it is not apparent to me that new or further federal action or support at this time is necessary to encourage or assure the realization of maximum possible intermodal efficiencies.

There are, however, several areas of concern which should be watched, and possibly require some type of future government attention.

Issues of Concern to Be Resolved

- We applaud the action taken by Congress on the Surface Transportation Act of 1982 and the DOT Appropriations Act of 1982 insofar as increasing and encouraging national uniformity of vehicle sizes and weights. Many products of grocery manufacturers are comparatively light weight and will "cube out" before they exceed maximum weights. The increase in length to 48 feet and width to 102 inches will have a beneficial effect on the unit cost of transportation of these products.

A concern, for both over-the-road and TOFC shipments is the manner in which states, such as Illinois, will permit vehicles of this size "reasonable access" to our plants, distribution centers and customers. As I understand it, under the terms of the STAA of 1982, the Department of Transportation must make an initial determination of "qualifying" federal aid primary system highways by April 6, 1983 and a final determination by October 3, 1983. States will have until October 1, 1983 to bring their laws into compliance with the new limitations and to identify either specifically, or by some guidelines, tributary routes over which the larger vehicles may travel to reach the federal highways.

While not recommending any governmental action at this time on the matter, there may be further attention needed after we see how the access routes are delineated.

- Many railroads currently offer lower TOFC rates to so-called third parties, e.g. shippers agents, associations and freight forwarders, than to the actual shippers or beneficial owners. We have no quarrel with this where economically justified, but believe we, as a shipper, are entitled to the same level of rates when we tender sufficient volumes under similar circumstances. There is currently a difference of opinion among railroads as to the efficacy of this retail/wholesale rate-making practice. Chessie, for example, offers door-to-door service to shippers, at a rate comparable to that available from a third party. Interestingly, the Seaboard System, also a unit of CSX Corporation has so far opted to "wholesale" their TOFC business through third parties.

  We believe this will all shake out in due course, based on commercial considerations. Again, we do not suggest government action now, but identify the treatment of shippers vis-a-vis third parties as a possible future area of complaint against unlawful discrimination.

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equity, its rates for intermodal moves should be deregulated, as is the case with railroad owned motor carriers.

Conclusion

It is obvious the whole intermodal environment is changing, brought about by deregulation and aggressive marketing by the railroads and motor carriers involved. Liberalization and standardization of truck weight/length/width dimensions will be significant not only for over-the-road traffic, but must be considered in future intermodal equipment development and pricing. It is Quaker's position, which I believe is shared by many other members of GMA, that no further remedial action by the federal government is required at this time. By the same token, as the carriers and the marketplace react to these new opportunities, problems may arise which would be appropriate for the public sector to address.

Thank you for the opportunity to share my views with you this morning.

WATER TRANSPORTATION ASSOCIATION

STATEMENT OF JOHN A. CREEDY, PRESIDENT

INTERMODAL OPERATION BETWEEN RAIL AND WATER

Senator ANDREWS. Our next witness is John A. Creedy, the president of the Water Transport Association.

Welcome, Mr. Creedy. We are glad to have you summarize your statement in whatever form you feel most effective.

Mr. CREEDY. Thank you, Mr. Chairman.

It is a privilege to be here with my friends, Bill Dempsey and Ed Kiley. Bill and I were on panels during the year as well as for the first time, as you say, before a congressional committee in some years.

I think that just to put this whole thing in perspective, how the intermodal operation is working as between rail and water, I might say that, as you know, the barge and water carrier industry produces what is the cheapest form of transportation in the surface field. We are perhaps the most effective competitor of railroads over the long distances for bulk commodities such as grain and coal.

I have attached to my statement the most recent analysis of the Tennessee Valley Authority on water competitive rail rate reductions to give you some idea of what is involved here in the water competition. This is something that TVA does every year. It gives you an insight into how this water competition impacts on rail transportation all over the country.

These reductions are anywhere from 50 to 25 percent, some of them more. They offer profit reductions. The railroads make good money on these rates so they wouldn't put them in.

It gives us some background and perspective on what is at stake on this question of are we going to see a replay of railroad entry into barg-

ing, on the problems that President Theodore Roosevelt addressed himself to in the Interwaterway Commission Report of 1908 which is in a Senate document in the 60th Congress.

Is the competition to be bought up and controlled or is it to be continued unfettered as it now is? That I think is the basic question that we are facing.

NEEDS OF RAILROADS

Now, we cooperate, as you pointed out, with the railroads very closely on a great deal, millions of tons, of traffic. The railroads need water carriers to reach significant markets. The Burlington Northern, for example, needs the Great Lakes self-unloader out at Duluth to reach Detroit for the delivery of coal.

It needs bargelines out of St. Louis to reach the New Orleans, La., market for its coal. One of our bargelines built a terminal at St. Louis which will give the Burlington Northern back one of its unit trains in 4 hours so that those trains can shuttle back and forth.

The Chessie and N&W need bargeline connections to reach utility markets for their coal on the Ohio River. So, where it is frequently in the interest of the railroad to promote rail-water coordination, they do so.

The picture changes radically where there is a conflict of interest. I have put in my testimony as an exhibit B a little picture of how this turns into a problem when a railroad has a conflict of interest.

Where the railroad controls both the single line to the destination and the line to the port it can effectively block off access for the water carrier. We have had many cases on this going up to the Supreme Court and the process of this blockage or the prevention of access to the interior grain elevator is an abuse which, under the present regulation, is controlled. We have had these cases many times.

PROBLEMS OF SOO LINE RAILROAD

Now, if you would substitute for the lake route here the Soo Line railroad, you will see the problem of the competition of the single-line with a joint-line railroad. The Soo Line, in a filing that I am attaching to my statement, is concerned with the Burlington Northern and C&W closing the connecting route so that the joint-line route won't compete, can't compete, with the single-line route.

What happens to the Soo Line and many other small railroads is the same as happens in this case, that is price competition is eliminated. Price competition is, of course, the name of the game in transportation as in any other part of the economy. This is not a small problem, Mr. Chairman, for the coal industry.

We are in a case before the ICC with the coal industry and they are complaining of monopoly pricing on the transportation to the Atlantic seaboard on the part of the railroads whose rates go up to 340 percent of variable cost and there is a blockage of an alternative route by the Gulf of Mexico ports and we are getting into it. We have been in a case with them trying to preserve regulation of this monopoly pricing.

The ICC has recommended that this be exempted from regulation despite the recommendation of the coal industry, the Commerce Department, the State Department, every one of our coal customers abroad. There is a possibility of a competitive route via New Orleans which is being closed out and we are concerned that deregulation, as it has developed and as the ICC has interpreted it, has led to a lessening of price competition.

SHIPPING BULK COMMODITY

Senator ANDREWS. Mr. Creedy, let me get back to that because we have the chart that you show in your testimony. What you are telling the committee then is that in the shipment of a bulk commodity like coal or like grain, if the most economical route, based on cost of moving it, would be a shared route, part by water and part by rail, you say that under total dereguation or under the steps that the ICC has begun to take the railroad could in effect put a gate—or a gate is the best way of describing it—by exorbitantly high rates for the short haul which would force the entire haul over the railroad from point A to point B at a higher price than you would normally expect to have to pay for the combined shipment.

So the consumers then would get it in the neck because of deregulation allowing an arbitrarily high price for a short haul?

Mr. CREEDY. Yes; that is it,

Senator ANDREWS. I understand what you are saying.

Mr. CREEDY. That is what we call the horror story and we took the horror story down to Justice only a couple of weeks ago and they can see this is an evil and against the interest of the consumer and they say, "What we do down here when we have a monopoly of this kind is that we break it up," and we say, "Well, it is not practical to break up railroads, you can't break up the Burlington Northern. The trend is in the other direction, to merge them."

They say, "Well, when we can't break up the monopoly we regulate it."

We said, "Well, it is regulated now, but they are proposing to deregulate it."

They say, "Well, I am afraid you really have no remedy at all."

This is the situation.

RAILROAD DEREGULATION

Senator ANDREWS. In other words, the Justice Department is telling you that under deregulation if railroad *x* decided to charge seven times as much per mile to ship a ton of coal over a short route segment that would have been connected to a waterway, as it would charge to ship the same amount of coal over a longer haul route so that it can get all the traffic, that the Justice Department can't protect the shipper or the consumer, given deregulation?

Mr. CREEDY. That is correct, sir.

I have attached to my testimony a speech by Elliott Seiden, Director of the Antitrust Division's important Tax Department which says that the reason you don't have to worry about this is because, in their own self-interest, the railroads will not abuse their monopoly power.

I have also attached an answer which I gave in a speech at Houston in which I suggest that no manufacturer believes that you can trust the self-interest of the monopolist. No farmer would be happy relying on one source of supply for the fertilizer. The railroads themselves would be very unhappy if they had only one source of freight cars and only one source of diesel locomotives.

But this philosophy has paralyzed, it seems to me, the action of the regulatory commission and the action of the Justice Department.

What I say is that if this were not in transportation, if this were AT&T, there would be a private remedy for this precise type of abuse. Justice, itself, would be out there after an electric utility, for instance, which would try to prevent access of cheaper power to a community.

There is an interesting case that is cited in this speech on that. AT&T is facing something like $2 billion in damages because it was alleged by its competitors in the long distance telephone business that they were preventing access to the local telephone companies even though the MCI's and the other competitors were much lower in cost than AT&T.

A suit for private damages was instituted and $2 billion in damages are pending.

What we are saying is that there is a double standard here, that in transportation there is no reason why you can't apply the same antitrust standards for the same abuses and get some remedies.

On the intermodal company issue in that context where they have so much monopoly power and where it is unique you don't have that kind of monopoly power that the railroads enjoy, and the rest of the economy and then you look at intermodal companies. You say, what is the present restriction against railroad ownership of barges?

There is no prohibition. The only test they have to meet, and it seems to us a commonsense one, is that they can own barges provided the ownership does not exclude, prevent, or reduce competition. Those are the words in the Panama Canal Act.

It seems to us almost identical to the words of the Clayton Act which say anybody, provided there is no substantial lessening of competition and no tendency to create a monopoly. It seems to me the burden is on anyone who wants to change that standard, exclude, prevent, and reduce competition, to state what would be the advantages and why would you want to remove the standard. That is a simple competition test.

APPLICATIONS FROM RAILROADS

Well, how does it work? In recent years there have been three applications from railroads, two of which have been approved, one of which was denied.

One was an application for a railroad to run barges out to the Gulf of Mexico oil platforms. No possible way they could exclude, prevent, or reduce competition. We did not even protest it. Southern Railway got a right to run a bargeline from Pride, Ala., to Shawneetown, Ill. They never did it.

Nevertheless, they got the right. Illinois Central and Southern Pacific tried to buy a bargeline, Johnny Hick Company. It was determined it

would exclude, prevent, and reduce competition. It seems to me that none of the advantages that are claimed for intermodal ownership really are tied to ownership.

They can be just as well produced by coordination, voluntary coordination, without the risk of competition. So that I would say that the basic rule, should the Government get into this thing, is only where there is a chance of lessening competition.

Otherwise, if Southern Railroad wants to buy Piedmont Airlines, how can that reduce competition.

BACKGROUND ON RAILROAD OWNERSHIP

Now, I have put in here some background on the railroad ownership as railroads reduce in number to about six, I think, by the end of the decade. There are fewer and fewer railroads. I think that if they were to monopolize the transportation industry, they would have to get rid of the independent bargelines.

I think you can see that readily, if Burlington Northern were to buy a bargeline on the Columbia, I expect it would swallow the whole Columbia barge industry for breakfast and not be at all indisposed afterward.

It seems to us there are ways in which the independent could be disadvantaged and eliminated and would be. It would be a replay of the Teddy Roosevelt Inland Waterway Commission report.

QUESTIONS INVOLVING INTERMODAL COMPANIES

We are not opposed to intermodal companies per se, only where it reduces competition, and as this rising chorus from shippers and railroads like the Soo Line and others complain about the lessening of competition, it seems to me that your committee might ask the ICC why is this trend toward lessening competition when the mandate of the Staggers Act was you are going to lessen regulation and depend on competition for regulation.

It seems to me that the thing is not working out the way it was expected.

I have one last point. One of the arguments we have made is that you are not going to have to worry about all this because if the railroads were to misbehave after they got hold of the bargelines and raised the rates, and so on and so forth, then the water carriers would come right back in and make them behave again.

REESTABLISHED BARGELINES

The Inland Waterway Commission report was in 1908. Language was put in the Panama Canal Act and in the Interstate Commerce Act to encourage reestablishment of water competition, but the Mississippi bankers and businessmen were very shy of coming back.

The Government started a bargeline. It was not until President Dwight Eisenhower's time that bargelines were sufficiently reestablished so that President Eisenhower sold the Federal bargeline to a private company. That was 40 years. So, you don't count on reentry to protect the public.

I have gone on too long, I apologize, but we do think that there is a remedy to this. It is not reregulation. It is giving shippers and competitors the same right of private damage that every manufacturer of widgets and clamps and everything else has in the private economy.

We don't necessarily want to collect the damages. That is not the objective. The objective is self-regulation, which is what happened under the antitrust laws, you see. It is perfectly all right for a railroad to close off a competitive route and close off the price competition, but he should know when he does it there is a right of private damages.

I think you will find that these abuses are so classic, have been used so often, that the courts, when they see them, will recognize them and I think you will find that if the Government stands back and lets the right of private damages produce self-regulation, you may well find an answer to these abuses which now have no remedy.

PREPARED STATEMENT

Senator ANDREWS. Thank you very much, Mr. Creedy. Your prepared statement will appear at this point in the record.

[The statement follows:]

STATEMENT OF JOHN A. CREEDY

My name is John A. Creedy, and I am President of the Water Transport Association of Washington D.C. and Arlington, Vermont, a national trade association of the ICC-certificated domestic water carriers operating on the inland rivers, and the Great Lakes and in the coastwise and intercoastal trades.

We appreciate this opportunity to testify on ways in which intermodal coordination may be improved and on the question of intermodal companies. The chairman's recent address on this subject wisely listed the new developments and, at the same time, recorded that a number of disadvantages may result. Before discussing the issue of intermodal ownership, let me take you on a brief tour of what is going on in the domestic water carrier industry with particular reference to coordination of rail and water services.

To say that the barge industry is depressed at this time is an understatement. I need not remind you that the customers we serve--chiefly coal, steel, electric utilities, the construction industry, the chemical industry and particularly the agricultural community are, as you are well aware, going through very hard times. This is reflected in a severe decline in demand for barge transportation. If factories are closed and employment is way off, electricity, for example, is not being consumed and the demand for barge-transported coal declines. Something over a third of the barge fleet is currently tied to the bank. We are not looking for much of an upturn this year.

The chief advantage of water transportation is a matter of simple physics. It takes less energy and less effort to push a ton through water than on rail or on the highway, and the result is very low rates for those commodities--grain, coal, fertilizers, chemicals, construction aggregates and the like which are readily adaptable to large-volume transportation. A barge will carry 1,500 tons of corn. Lashed together in river tows a flotilla of barges will carry from 30 to 60,000 tons, depending on the number of barges.

The new Great Lakes self-unloaders will transport 50 to 60,000 tons of coal and unload themselves at over 10,000 tons an hour. There is no more efficient way to transport bulk and many non-bulk commodities such as paper, steel and scrap iron than by water.

A major characteristic of the water business is that there is pervasive competition, with each company constantly striving to increase its efficiency, so as to increase its share of the total market. There are large companies and small companies and together hundreds of companies are available to serve the public. The barging industry is perhaps the best example we know in the economy of the virtues of competition. The best efficiencies of the highly developed shallow draft technology are passed through to the public.

For long distance movements of these commodities--beyond the relatively short truck range--water transportation is the only practical alternative to rail service. I am attaching to this testimony the most recent annual analysis of water competitive rail rates made by the Tennessee Valley Authority. It provides an insight into the powerful effect of water competition on rail rates. In many cases, as my Exhibit A shows, the rail rates for important movements are sometimes cut in half or by one third or a quarter where there is water competition. Multiply these examples all over the country and you have some idea what a powerful influence water competition has on reducing production expense and expanding markets and employment. I should emphasize that all these rail rate reductions are motivated by maximizing rail profits. One can see by inspection that for the distances involved they should be quite profitable rates--not monopoly rates to be sure, but profitable. The railroads are not forced to publish these reduced rates; they do it for the best of reasons. They want to keep making good money on the traffic. So if there are to be changes in the present standards which now permit rail ownership of barge lines, and those changes result in weakening water competition, the stakes are very high. Making competition work better is one thing; undermining competition by permitting the buying up and controlling of such productive competition would obviously be very much in the railroad interest. It could be highly counter-productive from the public point of view because it could lead to increased rates and curtailment of markets and employment. That's what's at issue here.

I'll return to my central point shortly--would a change in ownership standards lessen competition which produces low rates,

ample capacity and better service or not? That's the important question.

Railroads and water carriers compete, but they also cooperate. It is often very much in the interest of a railroad to do so. Railroads cannot reach certain markets without making use of a water carrier. For example, the Burlington Northern was able to market western coal as far away as Detroit in the east and New Orleans, Louisiana, in the south by connecting with a water carrier. Millions of tons of coal are transported hundreds of miles by efficient unit trains to Duluth for transfer to a Great Lakes self-unloader and then on to Detroit. BN unit trains also transport coal to St. Louis for transfer to barges and on to New Orleans by river. Without the water connection, the all-rail alternative would have been too expensive and the utilities would have found their coal supply elsewhere.

Similarly, on the Ohio River, the Chessie, Norfolk-Southern and L&N exert themselves to provide connecting service to barge lines for delivery to electric utilities because they would lose part of their coal market to some other source of coal and some other railroad if they did not.

But the picture changes radically when, as is often the case, the public need for efficient rail-water service runs into rail monopoly of interior origins of traffic. Where the railroad has the arbitrary power to shut out or prevent access to the interior so as to monopolize the traffic for itself, the public interest is not served.

They say a picture is worth a thousand words. May I refer to my Exhibit B, the "price squeeze" chart attached. You can see a situation, repeated hundreds of times throughout the country, in which it may well be very much in the public interest for a railroad to connect with a water carrier because the connection of rail efficiencies and water carrier efficiencies would add up to a lower overall price. But the private interest of the railroad in keeping the entire haul to itself can produce the kind of "shut-out" rate to the port, illustrated here, which artificially prevents competition

of the rail-water route regardless of what is very often the superior efficiency of the rail-water route.

We have in railroading what we don't have in the unregulated economy or in trucking or in barging--a substantial amount of monopoly power. It isn't the size of a railroad competitor that is the problem. Small companies often compete vigorously and even, at times, run rings around large companies and both prosper. It is the fact that railroads have a hundred ways they can undermine competition not available to a manufacturer in the ordinary business world and every incentive to do so.

When a railroad comes to the river bank seeking a barge connection, there are dozens of barge lines anxious to serve, and he automatically gets the best efficiencies of the water industry. When a water carrier tries to reach an interior mine or grain elevator, there is usually one railroad. There is no competition on the interior leg, and the water carrier and his potential customer seeking a lower cost service have to rely on the sufferance of the railroad as to how much competition it will permit. Usually competition is not permitted at all.

Nowhere else in the economy does such a situation exist. The railroads would be the first to complain if a supplier of a significant part of their business had such leverage. Indeed some railroads, like the SOO Line which serves North Dakota, are beginning to complain because precisely the practices which have long reduced rail-water competition with the all-rail are now being applied to shut them out of markets in Wisconsin and lessen the competition of railroads among themselves. On the chart you have before you, just substitute the SOO Line for the water carrier, and you will see what the controversy over the closing of joint-line routes which compete with the single line is all about. The larger railroad like the BN or the C&NW will cancel joint rates, impose exhorbitant switching charges, refuse to connect or use any of a number of other tactics to shut out the competition of the SOO Line. They effectively deny access to grain elevators, eastbound lumber or other traffic. More important, they deny farmers and shippers access to an alternative route which can provide price competition for them. That's the evil.

It has all been happening in the name of deregulation--in the name of giving railroads more pricing flexibility.

The idea behind deregulation was not to permit monopolization or an "anything goes" climate. It was to substitute the market place for government intervention. Where the market place does not work--where monopoly power still persists--regulation was to be continued. This was clearly the import of the special amendments to the Staggers Act in Section 707 which provided that as to water-rail relationships, the regulatory powers of the commission would remain undiluted.

A substantial example of where the market place is not working--where the policies of the country in promoting exports are being undermined by the abuse of monopoly power and where the consequences may be the loss of billions of dollars worth of exports--is currently occurring in the export coal market.

Railroads have a tight monopoly on one major leg of the coal production and distribution process. Their grip on rates and services to the Atlantic seaboard from the Appalachian coal fields is total. Rail rates up to 340 per cent of variable cost have been placed in evidence in a current export coal case before the ICC.

The cost of transporting the coal via rail to the Ohio River, barge to New Orleans and ocean collier to Japan and other destinations, including Europe, is actually lower than via Newport News from significant common origins. The overall cost difference for domestic transport for millions of tons of coal between the east coast and the Gulf, according to a recent coal company survey, is within 2 and 4 per cent of the delivered price of coal and sometimes less, so close that you would think there would be much more active competition between the Gulf and the Atlantic seaboard. And yet because of the rail monopoly on the leg to the Ohio River and highly questionable contractual provisions, the forces of competition between New Orleans and Newport News are not working well. Rail rates to the Atlantic seaboard are at an all-time high and the country s coal exports are at risk.

By complaining to the ICC last summer, the water carriers were able to persuade the railroads to reduce an unconscionable discrimination on export coal to the Ohio River. Where before, the Chessie and N&W had been charging $1 a ton to $6 a ton above the domestic

rate just because the coal moved for export, the two railroads agreed to drop the export rate to the domestic level.

Now the ICC proposes to exempt all export coal from regulation against the advice of the coal industry, the Commerce Department, the State Department and every foreign customer for coal we have. Unless the court reverses, there will be no policeman to maintain a non-discriminatory rate to the river and no safeguard for whatever else is being done to shut out the New Orleans alternative route and no limit other than the benevolence of the monopolist on the price exacted for transporting coal by rail.

Eliminating regulation when there is no assurance that the market place is working is surely contrary to both common sense and the intent of the Congress. The rationale appears to be that we should rely on the self interest of the monopolist. In his own interest, the rail monopolist will not spoil the very trade on which he relies, it is argued. He may charge an exhorbitant price, divert most of a coal company's profits, dictate where a company can sell its coal, but he will not, in his own interest, actually put the coal company out of business except by error.

I attach as Exhibit C a report of a speech in which this philosophy is outlined in extreme form by Elliott Seiden, Transportation Chief of the Antitrust Division of the Justice Department. I also attach as Exhibit D a paper given to a seminar of the National Coal Association and the Edison Electric Institute in Houston, entitled "Government Defends Monopoly, An Historic Switch." I'd like to see the exchange as part of this record. Neither the ICC nor the Justice Department seem to be willing to act on some serious monopoly-type abuses in transportation though Justice has no difficulty, as my paper points out, in seeing the evil when it occurs in other regulated industries and acting promptly to stop it. There is quite a double standard here.

All one can say of the current philosophy of the benevolent monopolist is that no manufacturer I have ever met believes it or would allow himself to be the victim of a monopolist for any essential part of his supplies. No farmer would be very happy to be dependent on only one source of fertilizer. And so on throughout the entire economy. Only in transportation do we meet this absurd philosophy.

If one takes a monopoly horror story in transportation to the Justice Department, they will readily concede the evil. Our remedy, they will tell you, is to break up the monopoly. When you can't break up the monopoly, you have to regulate it in a way that prevents abuse, they say. The remedy is with regulation, we are told. But if, you say, the ICC doesn't choose to regulate the monopoly or regulates it poorly, what then is the recourse? I am compelled to say that, with the present ICC, probably none at all. Deregulation was never the total panacea some believed, but the notable lack of interest in the health of the competitive process exhibited so far certainly turns on its head the Congressional intent that competition be the safeguard of the public interest as regulation fades away.

It is in this climate that we are beginning to hear that the rail merger trend, which is expected to leave us with about half a dozen major rail systems by the end of the decade, may be extended to include acquisition of or expansion into competitive barging.

The present statute--the Panama Canal Act--is a permissive one. It does not prohibit rail ownership of water carriers. Rail ownership is permitted when such ownership does not "exclude, prevent or reduce competition." In the light of the well documented monopoly power of railroads this would seem to be a sensible proviso. We know of no element of the public interest which is superior to competition. Competition brings low rates, improved service, maximum efficiency and adequacy of supply of equipment. The exclusion, prevention or reduction of competition always leads to oppression of the public.

It is a standard not much different from that applying to mergers under the antitrust laws. Anyone can merge with anyone else provided the result is not a substantial lessening of competition or a tendency to create a monopoly.

As to intermodal innovations, there is no need, in our view, for the government to intervene unless there is a lessening of competition. In our view, the present case by case approach makes the most sense. Where there is a lessening of competition, the public interest is best served by banning such ownership.

"In their own self interest" intermodal companies would never abuse their power, you can hear someone saying. But surely, the

answer is simple. Let's not rely on hope as to the benevolence of the monopolist. In the absence of compelling reasons to the contrary, let's stick to what we know works. There are no compelling reasons for change. Every single benefit claimed for intermodal ownership can be achieved by voluntary coordination without any risk to the competitive process. Barges and trucks get on famously together because for both trucks and barges competition is pervasive. If one fellow doesn't want to give you the best efficiencies the state of the trucking or barging art can provide, there are a dozen more waiting to do so.

Railroads find barge lines easy to get along with, there are so many alternatives. Pipelines and barges get on well with each other. And so it goes. Only the railroads have a substantial conflict of interest. Only the railroads have natural monopoly powers which no other industry enjoys. Only they can obstruct--and do obstruct intermodalism when it runs into their monopoly power.

The road to monopoly, public abuse, higher rates and poorer service--to the exclusion, prevention and reduction of water competition--would begin with the elimination of the independent water carrier. It might come quite suddenly. Almost overnight the river could be dominated by the big railroads, every one of them with an enormous motive to stop the kind of rate reductions described in the TVA analysis of water competitive rail rates.

They would have to eliminate the independents.

They might hope for price leadership and the kind of price signalling now going on with respect to contracts among half a dozen intermodal companies. But, of course, with 50 independents out there, price leadership and signalling would be impossible. So they would have to get rid of the independents. How would they work that? Fortunately, or unfortunately, we have a blueprint on how they would do it, all documented and well laid out in an ICC case in which they did do it.

This is the so-called Lake Lines Case, the application of railroads owning boat lines on the Great Lakes to continue their ownership after the passage of the Panama Canal Act. The case was decided May 7, 1915.

The facts show that the rail-owned boat lines were used first as a sword to eliminate the independents by lowering rates so as to put them out of business. Monopolists frequently begin by lowering prices. Today, cross subsidy from high market dominant rates would be easy for them. They could afford to operate the water carriers at a loss because of the enormous advantages they would enjoy in raising rates later on. This they did on the Great Lakes until there was no difference between rail and water rates.

There are some simple-minded economists who believe that such a tactic would never work today because the boat lines would come back strongly as soon as the railroads started to misbehave. Let him look at the Great Lakes experience. The rail-owned water line was maintained at a loss for a long period and acted as a shield to prevent the re-entry of boat lines. Why not? The rail profits were enormous.

Something similar happened on the Mississippi River. The Panama Canal Act was passed in 1912 and the Interstate Commerce Act between them contained many fine words to encourage the re-establishment of water competition. But fine words in the law do not impress nearly as much as vivid experience. The government had to put its own barge line in business--Federal Barge Lines--and keep it going for decades before investment could be coaxed out of banks and businessmen. The argument was simple: Why should they risk good money just for the privilege of being wiped out again?

Between the report of President Theodore Roosevelt's Inland Waterway Commission in 1908 recommending the re-establishment of water competition and stressing the evils of rail ownership of water carriers and the day President Dwight D. Eisenhower sold Federal Barge Lines to a private company as no longer needed to encourage water competition was 40 years. So don't count on re-entry to protect the public. Investors are smarter than theoretical economists.

Would the independent inevitably lose out? There can be no doubt of it. Railroads would have a hundred ways to make sure the independent could never stand up against the rail-owned barge line regardless of its efficiency. The simple tactic of cross-subsidy by itself would be powerful enough to knock out the independent. With stakes so high, it would be well worth while for a railroad to cross

subsidize a low barge rate on the rivers. Against such a rate no independent could survive. But there are innumerable other ways. For the traffic water carriers handle--coal, grain, chemicals, construction aggregates, and the like--railroads usually carry a major share of any large company's total traffic, while barges carry a smaller share. Total requirements contracts covering both rail and water shipments could include concessions which the independent could never match. Switching concessions provided to a rail subsidiary and not to an independent, service concessions of all kinds from car supply to volume rates could be decisive. It would be so easy for railroads to shut out the independents one after the other and discourage new investment that the outcome would never be in doubt. One would have to be very naive to believe that all a railroad would want would be to share in barge profits when it had the power to achieve so much more.

I have mentioned above many times that rail monopoly power is now being used to block competition. The ICC seems uninterested in many important instances, in exercising its simple instructions from the Congress to promote inter-modal and intra-modal competition despite the fact that competition is recognized as the most effective safeguard against abuse and oppression of the public.

Perhaps this Committee should make sure when the Commission comes for its appropriations, that the appropriations are properly used to foster competition not to defeat it by requiring responses to the growing chorus of complaints about the lessening of competition of railroads against each other, of railroad competitors and of shippers victimized by the absence of competition.

As the railroad mergers continue, and further deregulation develops, either at the initiative of Congress, or, at the ICC's initiative in defiance of Congress, both competitors and shippers increasingly need the right to go directly into Federal court with a damage deterrent any manufacturer of widgets or lamps or anything else has as a matter of right. The fact is that, as deregulation continues, a no man's land is opening up in which ICC remedies are ineffective and the antitrust laws do not clearly apply. Abuses are permitted that would be considered unconscionable if they were practiced in the unregulated economy.

So deregulation has gone in directions never intended. The way to cure the problem is not to bring regulation back, but to pattern what's left of regulation on the well-tested pro-competition principles of the antitrust laws. Central to successful enforcement of these principles is the damage deterrent. From it you get not the collection of damages so much as self-regulation of potential abuses. That's what's needed here. Let the railroad put in shut-out rates that prevent the competition of the Gulf ports with the east coast, but let him know when he does it that he will be subject to a private suit for treble damages in the Federal courts--not just a slap on the wrist or indifference from the ICC. Let the government stand back and watch the magic of self-regulation take over. I predict the courts will have no difficulty recognizing anti-competitive tactics when they see them.

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WATER COMPETITIVE RAIL RATE REDUCTIONS — EXHIBIT A

Level of Rates as of July 1, 1982

(Rates in Cents Per Net Ton)

NOTE: These rates, in some instances are contingent on maximum weight or volume requirements being met. In the event these requirements are not met, higher rates may apply. Details are available in our backup files. Contract rates, which are not public information, are disregarded in this report.

Commodity	From	To	Non-Competitive Rate	Competitive Rate
ACETALDEHYDE	Bayport, TX	Kingsport, TN	3880	3400[c,e]
ACETATE, ISOBUTYL	Kingsport, TN	New Orleans, LA	6060	2420[c]
ACETATE, VINYL	Bayport, TX(3)[a]	Knoxville, TN	5620	4800
	Calvert, KY	Chicago, IL	6060	2920[c]
	Calvert, KY	Henry, IL	5820	2860[c]
	Calvert, KY	Louisville, KY	3900	2080[c]
	North Seadrift, TX	Calvert, KY	8760	3500[c]
	S. Bay City, TX(4)[a]	Calvert, KY	8360	3440[c]
	S. Bay City, TX	Decatur, AL	8360	1920[c]
	Texas City, TX(3)[a]	Decatur, AL	8000	1860[c]
ACETONE	Allemania, LA	Kingsport, TN	6940	2180[c]
	Kingsport, TN	New Orleans, LA	6060	2380[c]
ACID, ACETIC	Bishop, TX(2)[a]	Decatur, AL	6700	3660[c]
	Calvert, KY	Bishop, TX(2)[a]	12080[m]	3520[c]
	Calvert, KY	Chicago, IL(2)[a]	7120[m]	3160[c]
	Texas City, TX(2)[a]	Decatur, AL	5700	2320[c,e]
ACID, ADIPIC	Bloomington, TX	Chattanooga, TN(2)[a]	5100	3580[c,e]
	Orange, TX	Chattanooga, TN(2)[a]	4200	2960[c,e]
ACID, DODECANEDIOIC	Bloomington, TX	Chattanooga, TN(2)[a]	16400[m]	4060[c,e,i]
ACID, MURIATIC	Calvert, KY	Chicago, IL	3280	2430[c]
	Chattanooga, TN	Chicago, IL(3)[a]	4280	2430[c]
	Chattanooga, TN	Clinton, IA	4640	2430[c]
	Chattanooga, TN	Muscatine, IA	4720	2911
	Chattanooga, TN	Peoria, IL(3)[a]	4220	2430[c]
	Chattanooga, TN	Princeton, IA	4640	2911
ACID, PROPIONIC	Kingsport, TN	New Orleans, LA	10340[m]	2240[c]
	Kingsport, TN	Kansas City, MO-KS	5180	3660[c]
	Kingsport, TN	Roseport, MN(3)[a]	6100	4000[c]
ACID, SULPHURIC	Tulsa, OK	Calvert, KY	3069	1730[e]
ACRYLONITRILE	Chocolate Bayou, TX(4)[a]	Kingsport, TN	9540	4340[c]
	Dowling, TX	Kingsport, TN	6700	4000[c]
	Houston, TX(3)[a]	Decatur, AL	5340	1800[c]

Commodity	From	To	Non-Competitive Rate	Competitive Rate
ALCOHOL, ETHYL	Philadelphia, PA	Kingsport, TN(2)[a]	5180	3000[c]
ALFALFA MEAL	Nebraska City, NE	Guntersville, AL	7340	5680[c]
ALIPHATIC DIAMINE SOLUTION	Belle, WV	N. Chattanooga, TN	5300	2760[c,e]
ALUMINA	Baton Rouge, LA	Dalton, GA(5)[a]	2950	2075[c,d]
	Bauxite, AR	Alcoa, TN	2554	2141[c,d]
	Bauxite, AR	Listerhill, AL	2040[b]	1588[b,c,e]
	Gramercy, LA	Dalton, GA(4)[a]	2879	2036[c,d]
	Gregory, TX	Listerhill, AL	4104	2027[b,d]
	Mobile, AL	Alcoa, TN	2731	1919[c,d]
ALUMINUM BILLETS, PIGS, ETC.	Alcoa, TN	New Kensington, PA(2)[a]	4180	3680[c]
	Alcoa, TN	Riverdale, IA	3820	2830[b]
	Alcoa, TN	Warrick, IN(2)[a]	2500	2320
	Conalco, TN	Omal, OH	3800	2060[c]
	Gregory, TX	Listerhill, AL	4300	2473[c,e]
	Omal, OH	Chattanooga, TN	3460	2300[b]
	Omal, OH	Decatur, AL	3860	2336
	Omal, OH	Scottsboro, AL	3320	2257[b]
	Ravenswood Works, WV	Chattanooga, TN	3120	2225[b]
	Ravenswood Works, WV	Decatur, AL	3460	2265
	Ravenswood Works, WV	Scottsboro, AL	3220	2355[b,c]
	Warrick, IN	Alcoa, TN	2500	2320
ALUMINUM FLOURIDE	Geismar, LA	Listerhill, AL(4)[a]	3680	2975[c]
ALUMINUM FLUORIDE[j]	Gramercy, LA(2)[a]	Conalco, TN(2)[a]	3520	2208[b,c]
ASPHALT	Blakely, AL	Knoxville, TN	1920	1680[b,c]
	Wood River, IL(3)[a]	Bristol, TN	3940	2334[b,c]
BUTYL ACRYLATE, ETC.	Houston, TX	Knoxville, TN	9000	3520[b,c]
BUTYL METHACRYLATE	Freeport, TX(2)[a]	Knoxville, TN	9120	4580[c]
CALCIUM CARBIDE	Calvert, KY	Louisville, KY	3200	1411
	Louisville, KY	Calvert, KY	3200	1248[c,e]
CARBON FURNACE OR ELECTROLYTIC BATH (CARBON PLUGS)	Harbor, LA	Conalco, TN(2)[a]	10040[m]	1770[b,c]
	Morganton, NC	Chicago, IL	6140	4096[c,d]
	Morganton, NC	Federal, IL	11220[m]	3972[c]
	Morganton, NC	Kansas City, MO	7740	5658[c]
CAUSTIC SODA, LIQUID	Charleston, TN	Joliet, IL	2816	2167[e]
	Freeport, TX	Tildale, GA	2856	2635[e]
	Lake Charles, LA(2)[a]	New Johnsonville, TN	2421	2162
	Plaquemine, LA	Tildale, GA	2421	2213[e]
	Port Neches, TX	Kingsport, TN(2)[a]	3190	2945[b]

Commodity	From	To	Non-Competitive Rate	Competitive Rate
CHLORIDE, VINYL	Calvert, KY	Avon Lake, OH	6400	2320[c,e]
	Calvert, KY	Chicago, IL	11900[m]	3140[c]
	Calvert, KY	Henry, IL	11540[m]	1340[c,e]
	Calvert, KY	Lake Charles, LA	9960	5100[c]
	Calvert, KY	Louisville, KY	1629	717[e]
	Calvert, KY	S. Charleston, WV(2)[a]	14000[m]	3040[c]
	Lake Charles, LA(2)[a]	Calvert, KY	6040	3680[c]
	Plaquemine, LA	Calvert, KY	5780	3680[c]
CHLORIDE, VINYLIDENE	Freeport, TX(4)[a]	Decatur, AL	7760	3280[c]
	Freeport, TX	Tildale, GA	8220	3803[c,e]
	Lake Charles, LA(2)[a]	Decatur, AL	6800	2860[c]
	Lake Charles, LA(2)[a]	Kingsport, TN	8520	4700[c]
	Plaquemine, LA	Decatur, AL	6240	2700[c]
	Plaquemine, LA	Kingsport, TN	7820	4000[c]
	Plaquemine,LA	Tildale, GA	6640	3124[c,e]
CLAY	Paris, TN(24)[a]	Brownsville, TX	4146	3117[l]
	Paris, TN(24)[a]	Gonzales, TX	3647	2674
	Paris, TN(24)[a]	Palestine, TX	3167	2107
	Paris, TN(4)[a]	Port Tampa, FL(3)[a]	3481	3089
	Paris, TN(24)[a]	Riverside, TX(3)[a]	3492	2320
	Paris, TN(24)[a]	San Antonio, TX	3647	2741
	Paris, TN(24)[a]	Woodville, TX	3167	2187
	Spinks, TN	Barberton, OH	3916	2477[c]
	Spinks, TN(2)[a]	Brownsville, TX	3557	3082[c]
	Spinks, TN	Cincinnati, OH	2618	1877[c]
	Spinks, TN	E. St. Louis, IL	2504	1254[c]
COAL	Coalmont, TN	Thomas, AL(B'ham)	2010	1514
	East Tennessee	Sharonville, OH	1606	1417
	Southeast Tennessee	Sharonville, OH	1667	1483
	West Kentucky	New Johnsonville, TN	1981	1719
	Whitwell, TN	Thomas, AL(B'ham)	1981	1514
COAL TAR OIL	Follansbee, WV	Woodward, AL	7400[m]	2760[c]
	Woodward, AL	Chicago, IL	7400[m]	2700[c]
COKE, COKE BREEZE, ETC.	Chattanooga, TN	Houston, TX(73)[a]	6680[m]	2935[c]
ETHYLENE DICHLORIDE	Calvert, KY	Louisville, KY	3880	1217[b,c]
	Freeport, TX	Tildale, GA	7820	3056[c,e]
	Plaquemine, LA	Tildale, GA	6220	2887[c,e]

Commodity	From	To	Non-Competitive Rate	Competitive Rate
ETHYLENE GLYCOL	North Seadrift, TX	Decatur, AL	2080	1380[c,e]
	North Seadrift, TX	Kingsport, TN	3620	2740[e]
	Plaquemine, LA(11)[a]	Decatur, AL	1920	1300[c,e]
	South Bay City, TX	Decatur, AL	3260	1820[c]
	Taft, LA(2)[a]	Kingsport, TN	3220	2500[e]
	Texas City, TX(11)[a]	Decatur, AL	1920	1300[c,e]
	Texas City, TX(14)[a]	Kingsport, TN	3520	2660[e]
ETHYLENE GLYCOL, USED OR RECOVERED	Decatur, AL	Port Neches, TX(13)[a]	3400	1860[c]
ETHYLENE OXIDE	Grasselli, NJ	Calvert, KY	10440	5040[c]
FERTILIZER COMPOUNDS	Vertagreen, AL	Chicago Heights, IL	2581	2000[c]
FLUORSPAR	Brownsville, TX(3)[a]	Alabama City, AL(3)[a]	4789	3306[b,c]
GAS, LIQUID, CHLORINE	Baton Rouge, LA	Kingsport, TN	5606	4788
	Calvert, KY	E. St. Louis, IL	2652	1928[b]
	Calvert, KY	Louisville, KY	1184	789[e]
	Charleston, TN	Calvert, KY	3685	1911
	Charleston, TN	Doe Run, KY	3779	1342[b]
	Charleston, TN	Foley, FL	3961	1858
	Charleston, TN	Lake Charles, LA(2)[a]	7120	3665[c]
	Charleston, TN	Louisville, KY	3685	1515[b]
	Charleston, TN	New Johnsonville, TN	2437	2092[c]
	Charleston, TN	South Charleston, WV	4082	2819
	Evans City, AL	Calvert, KY	3077	1911
	Evans City, AL	St. Louis, MO	3809	2652
	Natrium, WV	New Johnsonville, TN	5580	2222[b,c]
	St. Gabriel, LA(4)[a]	New Johnsonville, TN	4478	2243[b]
	Vicksburg, MS	Chattanooga, TN	4082	3084
	Vicksburg, MS	New Johnsonville, TN	3125	2799[c]
GASOLINE	El Dorado, AR(3)[a]	Tuscumbia, AL(5)[a]	5780	4580[c]
GLYCOL ETHERS	Port Neches, TX(9)[a]	Kingsport, TN	7640	4840[c]
GRAINS, WHOLE & SOYBEANS		Southeast Points Average	4800	1420[b,c]
HEXAMETHYLENE DIAMINE SOLUTION	Belle, WV	N. Chattanooga, TN	5780	2640[c]
	Bloomington, TX(2)[a]	Chattanooga, TN(2)[a]	9120	2740[c]
	Orange, TX	Chattanooga, TN(2)[a]	7460	2160[c]
INDUSTRIAL CHEMICALS[j]	Longview, TX	Kingsport, TN	3520	3120[c,e]
IRON & STEEL INGOT MOLDS, STOOLS OR PLATES	Bessemer, PA(10)[a]	Fairfield, AL(2)[a]	5102	3003[b,c]
	Chicago, IL	Alabama City, AL	3826	3003[b,c]
	Pittsburgh, PA(5)[a]	Alabama City, AL(2)[a]	5927	3003[b,c]

Commodity	From	To	Non-Competitive Rate	Competitive Rate
IRON OR STEEL ANGLES	Chicago, IL(2)[a]	Birmingham, AL(30)[a]	4120	2960[c,h]
	Chicago, IL(2)[a]	Knoxville, TN	3760	2540[c,h]
	New Orleans, LA	Knoxville, TN	3360	2720[c,h]
IRON OR STEEL ANGLES; BARS; RODS; NOIBN	Chicago, IL	Chattanooga, TN	2940	2500[c,h]
IRON OR STEEL BILLETS, ETC.	Atlanta, GA	St. Louis, MO	3700	2880[c]
	Chicago, IL	Anniston, AL	3200	2652
	Gary, IN(2)[a]	Fairfield, AL(2)[a]	3100	2013[b,c]
	Midland, PA	Anniston, AL	3480	2929[c]
	Peoria, IL	Woodlawn, AL	2940	2309[b,c]
IRON OR STEEL BILLETS (FOR REROLLING PURPOSES ONLY)	Atlanta, GA	St. Louis, MO	8640[m]	1636[c]
IRON OR STEEL BLOOMS	Gary, IN(2)[a]	Fairfield, AL(2)[a]	3100	2013[b,c]
IRON OR STEEL BREAKDOWNS	Bessemer, PA(12)[a]	Fairfield, AL(2)[a]	3500	2567[f]
	Fairfield, AL(2)[a]	Gary, IN(2)[a]	9020[m]	2709[b,c]
	Gary, IN(2)[a]	Fairfield, AL(2)[a]	4490	2013[b,c,f]
	Youngstown, OH(2)[a]	Alabama City, AL	3560	2294[f]
IRON OR STEEL INGOTS OR SLABS	Bessemer, PA(10)[a]	Fairfield, AL(2)[a]	4080	2337[c,f]
IRON OR STEEL RODS	Chicago, IL	Fairfield, AL	3100	2533[e]
IRON OR STEEL SCRAP	Bessemer, PA(27)[a]	Calvert, KY	3271	2104
	Birmingham, AL	Chicago, IL	3118	2962
	Butler, PA	Calvert, KY	3271	2823
	Canton, OH	Calvert, KY	2902	2519
	Chicago, IL	Birmingham, AL(2)[a]	3351	3107[c]
	Chicago, IL	Calvert, KY	2421	2215
	Lowellville, OH(3)[a]	Calvert, KY	3228	2582
	Michigan City, IN	North Birmingham, AL	3351	2582[b]
IRON OR STEEL, SCRAP GRINDINGS	Calvert, KY	Canton, OH(2)[a]	3117	2897[c]
	Calvert, KY	Latrobe, PA	3387	2766
	Calvert, KY	Pittsburgh, PA(15)[a]	3271	2430
	Calvert, KY	Scottdale, PA	3469	2724
	Calvert, KY	Washington, PA	3271	2430
	Calvert, KY	Youngstown, OH(5)[a]	3228	3002[c]
IRON OR STEEL SLABS	Gary, IN(2)[a]	Ensley, AL(2)[a]	3100	2003[b,c]
IRON OR STEEL, WROUGHT, TUBULAR	Anniston, AL(3)[a]	Houston, TX(7)[a]	5000	4019[c,h]
LATEX, LIQUID	Baytown, TX	Dalton, GA(2)[a]	4360	3440[e]
	Kobuta, PA	Dalton, GA(2)[a]	4020	3960

Commodity	From	To	Non-Competitive Rate	Competitive Rate
LEAD, INGOTS, PIGS, SLABS OR BLOCKS	Herculaneum, MO	N. Chattanooga, TN	3469	2901[b]
LIME, COMMON	Mosher, MO	Calvert, KY	1636	1130[b,c]
MANGANESE METAL	New Johnsonville, TN	E. Liverpool, OH	5069	3115[c]
MANGANESE ORE	Bunside, LA	Rockwood, TN	4701[a]	1588[c]
	New Orleans, LA	Rockwood, TN	4701[a]	1183[c]
METAL ROLLING MACHINERY & PARTS, ETC.	Canton, OH(6)[a]	Bessemer, AL(7)[a]	13800[a]	6203[c]
	Johnstown, PA	Birmingham, AL(7)[a]	15500[a]	6045[c]
	Pittsburgh, PA(19)[a]	Birmingham, AL(7)[a]	14500[a]	6045[c]
	Pittsburgh, PA(16)[a]	Listerhill, AL	13800[a]	6045[c]
	Salem, OH	Fairfield, AL(6)[a]	14260[a]	6203[c]
	Youngstown, OH(3)[a]	Fairfield, AL(7)[a]	14500[a]	6203[c]
METALLIC ALLOYS[g]	Calvert, KY	Ashland, KY	2000	1667
	Calvert, KY	Beaver Falls, PA(3)[a]	3561	1968[c]
	Calvert, KY	Beverly, OH(2)[a]	4454	2114[c]
	Calvert, KY	Burlington, IA	3686	2195[c]
	Calvert, KY	Chicago, IL	3686	1629[c]
	Calvert, KY	Dubuque, IA	3718	2504[c]
	Calvert, KY	Graham, WV	4454	1968[c]
	Calvert, KY	Houston, PA	4815	2114[c]
	Calvert, KY	Keokuk, IA	3555	1843[c]
	Calvert, KY	Marietta, OH	4454	1968[c]
	Calvert, KY	Mingo Jct., OH	4558	1968[c]
	Calvert, KY	New Kensington, PA	3561	1968[c]
	Calvert, KY	Pittsburgh, PA Area	3434	1968[c]
	Calvert, KY	Rock Island, IL(6)[a]	3229	2334[c]
	Calvert, KY	Steubenville, OH	3402	1968[c]
	Calvert, KY	Weirton, WV	2978	1968[c]
	Emco, AL	Alloy, WV	2519	1518[c]
	Emco, AL	Bridgeville, PA	4597	1802[c]
	Emco, AL(3)[a]	Chicago, IL(3)[a]	3660	2002[c]
	Emco, AL	Omaha, NE(2)[a]	5542	3043
	Graham, WV	Attalla, AL(3)[a]	5012	2545[c]
	Graham, WV	Chattanooga, TN	4505	2212[c]
	Graham, WV	Emco, AL	5239	2212[c]
	Marietta, OH	Attalla, AL(3)[a]	5239	2696[c]
	Marietta, OH	Chattanooga, TN	4847	2212[c]
	Marietta, OH(2)[a]	Emco, AL	5352	1407[c]
	Philo, OH	Chattanooga, TN	4731	2212[c]

Commodity	From	To	Non-Competitive Rate	Competitive Rate
METALLIC ALLOYS[g] (cont.)	Philo, OH	Emco, AL	5071	2212[c]
	Rockwood, TN	Braddock, PA(5)[a]	3804	1802[c]
	Rockwood, TN	Chicago, IL(3)[a]	3660	2002[c]
	Rockwood, TN	E. Liverpool, OH	4252	1802[c]
	Rockwood, TN	Omaha, NE(2)[a]	6130	3043
	Rockwood, TN	Pittsburgh, PA(25)[a]	3804	1811[c]
	Rockwood, TN	Wellsville, OH	3804	2615[c]
METHANOL (METHYL ALCOHOL)	Allemania, LA(18)[a]	Calvert, KY	5580	1940[c,h]
	Allemania, LA	Kingsport, TN	7100	2180[c]
	Bishop, TX	Decatur, AL	5780	3000[c]
	Geismar, LA	Calvert, KY	4780	1940[c]
	Geismar, LA(2)[a]	Kingsport, TN(5)[a]	6300	2220[c]
	Houston, TX(9)[a]	Kingsport, TN	8140	3460[c]
	North Seadrift, TX	Kingsport, TN	8580	3680[c]
	South Bay City, TX	Kingsport, TN	8280	3520[c]
NEWSPRINT PAPER[k]	Calhoun, TN	Baton Rouge, LA	2720	2193[c,d]
	Calhoun, TN	Chicago, IL	3420	2233[c]
	Calhoun, TN	Galveston, TX	5125	3916[c,d]
	Calhoun, TN	Houston, TX	5185	3245[c]
	Calhoun, TN	Pittsburgh, PA	2674[d]	2576
PAPER, GROUND WOOD	Calhoun, TN	Brownsville, TX	4340	3740[c]
	Calhoun, TN	Chicago, IL	3060	2160[c]
	Calhoun, TN	Minneapolis, MN(3)[a]	4112[d]	2660[e]
	Calhoun, TN	Omaha, NE	3844[d]	3540
PERCHLOROETHYLENE, TRICHLOROETHYLENE OR TRICHLOROETHANE	Freeport, TX	Tildale, GA	7820	3056[c,e]
	Houston, TX(2)[a]	Chattanooga, TN	6320	3394[c]
	Plaquemine, LA	Tildale, GA	6220	2887[c,e]
PETROLEUM COKE	Baton Rouge, LA	New Johnsonville, TN	2077	1961[c,e]
	Chicago, IL	New Johnsonville, TN	2867	2474[c]
	Chicago, IL(2)[a]	Sheffield, AL(3)[a]	3175	2632[c]
	Cresap, WV	Listerhill, AL	3196	2687[c]
	Cresap, WV	New Johnsonville, TN	2789	2607[c]
	Enid, OK	Alcoa, TN	3457	2691[c,e]
PHTHALIC ANHYDRIDE	Chicago, IL(2)[a]	Kingsport, TN	4100	3820
PIG IRON	Birmingham, AL(10)[a]	St. Louis, MO(2)[a]	2748	1996[c,h]
	Gary, IN(2)[a]	Fairfield, AL(2)[a]	3673	2013[b,c,f,i]
	Keokuk, IA	Chattanooga, TN	8820[m]	1695[c]

Commodity	From	To	Non-Competitive Rate	Competitive Rate
PIPE, WROUGHT IRON OR STEEL, ETC.	Preston, TN	Brownsville, TX(5)[a]	7680	4844[c]
	Preston, TN	Corpus Christi, TX	8990	6620[c]
PLASTICIZERS OR SOLVENTS	Kingsport, TN	Houston, TX(2)[a]	9420	3660[c]
	Texas City, TX(3)[a]	Chattanooga, TN(2)[a]	6760	3540[c]
POTASSIUM, CAUSTIC	Calvert, KY	Institute, WV	3740	2720[c]
	Calvert, KY	Louisville, KY(2)[a]	2440	1800[c]
	Calvert, KY	South Charleston, WV	3740	2480[c]
	Calvert, KY	Houston, TX	6060	2407
	Evans City, AL	Houston, TX(2)[a]	5580	2107
	Evans City, AL	Jeffersonville, IN	2860	1600[c]
	Evans City, AL	Port Neches, TX	5300	3004[c]
	Evans City, AL	Red Oak, IA	4940	3341
POT LINING, ELECTROLYTIC, SCRAP	Gregory, TX	Listerhill, AL	4315	2192[c]
	Gum Springs, AR(2)[a]	Florence, AL(3)[a]	1698	1293[c]
RESIN PLASTICIZERS	Baton Rouge, LA	Chattanooga, TN	5020	3220[c]
	St. Louis, MO(2)[a]	Chattanooga, TN	4200	2600[c]
SALT	Louisiana	Canton, NC	3980	2472[c]
	Louisiana	Charleston, TN	3360	1496[b,c,e]
	Louisiana	Evans City, AL	3120	1629[c]
	Louisiana	Swannanoa, NC(2)[a]	3980	2472[c]
	Grand Saline, TX	Canton, NC	3900	2582[c]
	Grand Saline, TX	Swannanoa, NC(2)[a]	4300	2582[c]
	Houston, TX(5)	Chattanooga, TN(2)[a]	3960	2567[c]
SHEET STEEL	Chicago, IL	Corinth, MS	2660	2380[c]
	Hennepin, IL	Corinth, MS	2460	2380[c]
SKELP, STEEL	Chicago, IL(6)[a]	Birmingham, AL(30)[a]	3440	1904[b,c]
	Chicago, IL(6)[a]	Preston, TN	3020	2622[b,c]
SLAG	Josephtown, PA	Chattanooga, TN	4160[m]	2597[c]
	Josephtown, PA	Holt, AL	4960[m]	3405[c]
STYRENE	Baton Rouge, LA	Chattanooga, TN(6)[a]	4640	2860
	Bruns, LA	Knoxville, TN	5100	3660
	Donaldsonville, LA	Chattanooga, TN	4560	2840
	Freeport, TX	Tildale, GA	5880	2718[c,e]
	Houston, TX(5)[a]	Chattanooga, TN	5840	3000
	Houston, TX(5)[a]	Chickamauga, TN(3)[a]	5840	2720[c]
	Houston, TX(8)[a]	Decatur, AL	5340	3000

Commodity	From	To	Non-Competitive Rate	Competitive Rate
SULPHUR	West Lake Charles,LA(2)[a]	Calvert, KY	4400[m]	3727[c]
	West Lake Charles,LA(2)[a]	Lowland, TN	5775	3727[c]
SYRUP, CORN	Decatur, AL	Hammond, IN	3760	2020[c,e]
TOLUENE (TULUOL)	Houston, TX(8)[a]	Chattanooga, TN(2)[a]	6200	2660[b,c]
	New Orleans, LA(2)[a]	Chattanooga, TN(2)[a]	2860	1186[b,c]
ZINC, DROSS, RESIDUE OR SKIMMINGS	Chattanooga, TN	Bartlesville, OK	3100	2300[c]
	Chattanooga, TN	Sand Springs, OK	3020	2220[c]
ZINC ORE CONCENTRATES	Jefferson City, TN(6)[a]	Josephtown, PA	1945	1565
ZINC, PIG OR SLAB, ETC.	Josephtown, PA	Chattanooga, TN	4200	2529[c]

[a] Numerals in parentheses indicate total number of origins or destinations to which the competitive rates apply. The level of the non-competitive rates shown is for the specific origins and destinations shown. For the other points between which the competitive rate applies, the level of the non-competitive rate might be somewhat different.

[b] Multiple car.

[c] Higher minimum weight.

[d] Actual rate consists of two factors, the first factor applying on a specified minimum weight, the second factor applying on weight loaded in excess of the minimum. The rate shown is an average, calculated on a weight we would consider to be a reasonable carload, preserving, insofar as possible, comparability between the competitive and non-competitive minimum weights.

[e] Minimum annual volume.

[f] Minimum monthly volume.

[g] This is a general term which we apply to a group of commodities, such as ferro-manganese, ferro-chrome, ferro-silicon, silicon-manganese, etc. The lowest rate applicable on any given combination of these alloys has been shown.

[h] Restricted routing or service.

[i] Applies in shipper-owned or leased covered hopper cars.

[j] Competitive rate shown applies on various materials. The non-competitive rate may vary depending on the material.

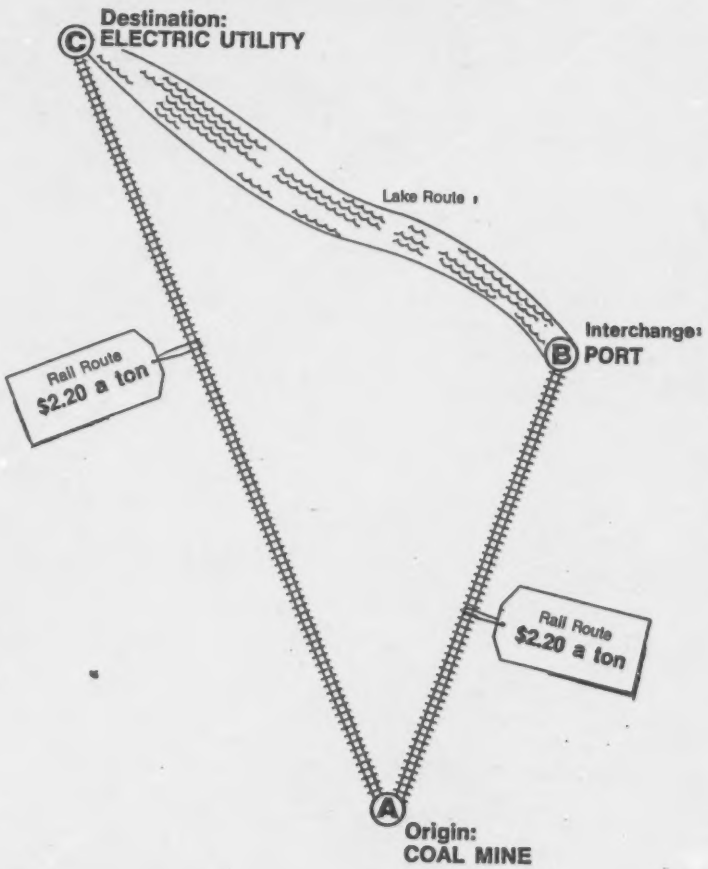
[k] Rates include off-track delivery charge.

[l] On export traffic, a lower rate applies.

[m] This is a class rate which normally does not move traffic but is the only alternative published. Lower rates can usually be negotiated where the need exists.

EXHIBIT B

Price Squeeze by XYZ Railroad



[EXHIBIT C]

TRANSPORT ANTITRUST CHIEF LAYS OUT DOJ'S METHOD OF PROBING VENTURES

[From Traffic World, February 7, 1983]

A key official in the Antitrust Division of the U.S. Department of Justice has given an insider's view on how the division analyzes potential problems in transportation.

Speaking January 25 in San Francisco, Elliott M. Seiden, chief of the division's transportation section, said that the division looks at the competitive implications of commercial ventures with a view to one central question: "Will the venture tend to reduce the total value of the goods and services that the economy can produce from the scarce resources that are available?"

Mr. Seiden spoke at a seminar on antitrust and transportation law sponsored by Golden Gate University in association with the antitrust and trade regulation section of the State Bar of California. He pointed out at the outset that the purpose of the antitrust laws is to preserve a free and competitive market so that the nation's resources can yield the largest quantity and richest possible variety of goods and services. He also made clear that horizontal agreements—agreements among competitors to establish minimum prices and agreements between competitors not to compete with one another in specific markets—remain the top priority of the division's enforcement policy.

In the speech, Mr. Seiden used the transportation concepts of rate cutting, discrimination, and joint lining to outline the steps the transportation section takes and the issues it analyzes when it reviews business undertakings. He suggested that transportation lawyers apply the analytical model he offered in his speech in considering commercial problems their clients might have and thus assist them in complying with the antitrust laws and in pursuing efficient ventures that do not restrain trade.

Leading into his discussion of price cutting, in which he focused on bribes and rebates, Mr. Seiden noted widely reported remarks by Commissioner Frederic N. Andre of the Interstate Commerce Commission comparing bribes and kickbacks to discounts and rebates (T. W., Dec. 27, 1982, p. 12). Mr. Seiden said that bribes, rebates, kickbacks and discounts cannot be considered procompetitive equivalents if each concept is evaluated on the basis of whether or not it would lead to a reduction in the value of society's output.

"Kickbacks and bribes, as commonly defined, can routinely be expected to have adverse effects upon output," he said, "while discounts and rebates can routinely be expected to have positive effects."

Applying dictionary definitions, Mr. Seiden said that a bribe is what a motor carrier pays a traffic manager of a shipper to induce the traffic manager to purchase trucking services and a kickback is a demand by a traffic manager that part of a freight bill paid to a motor carrier be "kicked back" to the traffic manager in order for the motor carrier to acquire or keep the shipper's business. He added that discounting and rebating are ways sellers attempt to out-perform their rivals by bringing goods and services to market at a price buyers find most attractive.

He said discounting and rebating ordinarily increase output and are unambiguously desirable, and that agreements not to rebate or discount are even prosecuted criminally by the Justice Department. The effects of bribes and kickbacks, he said, are a different story altogether.

"After accepting a bribe, the traffic manager decides to utilize the motor carrier, not necessarily because the motor carrier proposes the best service, or the lowest price, or some 'best' combination of both," said the transportation antitrust chief. "Rather, the traffic manager decides to utilize the bribing motor carrier based on a promise of personal reward without sufficient regard for the economic welfare of his company. This practice can be expected to result in an inefficient allocation of resources in two ways. First, if the shipper pays a higher freight bill because the traffic manager selects a higher cost motor carrier, the shipper's costs increase, and to the extent that this cost increase gets passed on to customers in the form of higher prices, there will be lower output. Second, there is a misallocation of resources because services are provided by a motor carrier that is less efficient than the motor carrier that would have been employed in the absence of a bribe."

On Commissioner Andre's remarks, Mr. Seiden pointed out that Mr. Andre referred to bribes in the context of "bribes among principals" and thus did "no more than use

the word bribe to describe the concept of rebate as I have previously defined it today."

On the subject of discrimination, Mr. Seiden laid out an elaborate hypothetical case, based on an assumption that there is no Interstate Commerce Act and no Sherman Act and that elected representatives are sitting on Congress pondering a problem and seeking a solution. The following is the hypothetical case as presented by Mr. Seiden:

"The problem is that a widgets manufacturer in Los Angeles, competing in a highly competitive widgets market, uses U.S. Rail to get its product to market. U.S. Rail is the only transportation alternative reasonably available to the Los Angeles company. The company has complained that it must pay 50 percent more than its competitor in San Francisco to ship its widgets on U.S. Rail for essentially the same transportation services. The Los Angeles company argues that this disparate treatment is obviously discriminatory and unfair and also harmful to competition and that the Congress should do something about it. If you were the chairman of the Senate Commerce Committee and requested the Antitrust Division for its analysis and recommendations we would approach the problem in the following manner.

First, the market for widgets is competitive. Therefore, no supplier of widgets can charge excessive prices for widgets. This means, moreover, that no link in the chain of production and distribution of widgets, including U.S. Rail can force an increase in the delivered price for widgets without pricing the widgets he helps bring to market out of the market. Therefore, even though both the San Francisco and Los Angeles widgets manufacturers have access to U.S. Rail only, U.S. Rail does not have any market power to raise the price of widgets in the marketplace. Accordingly, there is no public policy reason for having the government intervene in any way to insure that U.S. Rail's market power does not result in an increase in the price of widgets.

"Even if U.S. Rail is foolish enough to raise its freight rates to such a level as to drive out of business one or the other of these widget manufacturers, there will still be in the aggrdgate no reduction in widget output because the output lost by the exiting of one or both of these widget manufacturers will simply be picked up by the other widget manufacturers who remain in business.

"The investigation of any problem from the exercise of U.S. Rail's market power, then, must focus on the effects on other markets. If U.S. Rail's actions cause the Los Angeles manufacturer to reduce its output of widgets, those resources are likely to be devoted to less productive (and less remunerative) uses. Here, then, are the possible efficiency and equity consequences.

"It is important to realize that it is in U.S. Rail's interests to avoid any reduction in the Los Angeles manufacturer's output. Accordingly, U.S. Rail is likely to develop a volume-sensitive rate schedule of the Los Angeles manufacturer, with lower rates for higher volumes. Only if U.S. Rail is foolish or makes a serious miscalculation of its own best interests would its rates cause a significant decrease in the Los Angeles manufacturer's output. At the limit, I suppose an extreme miscalculation in rates by U.S. Rail might even cause the demise of the Los Angeles manufacturer.

"Thus, the only public policy issue presented for resolution is whether the government should intervene in some way to prevent U.S. Rail from charging its captive widget manufacturers as much as it wants to, disciplined not by market forces, but rather only by notions of its own economic self-interest. At its essential core, the question presented is whether the government should intervene to prevent U.S. Rail from making errors in its own self-interest that might also have a serious effect on particular firms—possibly even destroying them.

"A hard-hearted economist might well conclude his analysis at the precise point. Having satisfied himself that the practice at issue could not reasonably result in an output reduction, the theoretical economist would likely conclude that there is no possible basis for government intervention and be done with it.

"However, politicians tend not to be so hard-hearted, particularly when the jobs of constituents in their districts are at stake and the well being of productive firms in their jurisdictions may be placed in jeopardy. We should therefore accept as a given that policy makers will wish to prevent, if at all possible, the possible destructive exercise of natural monopoly power by railroads such as U.S. Rail. Thus, it becomes necessary to turn our attention to a series of additional questions that must be asked and answered to provide Congress with sufficient policy guidance particularly on whether steps should be taken to protect shippers from market power abuse.

"The first question that must be asked is what are the odds that U.S. Rail would exercise its natural monopoly power in a potentially destructive way. If the odds are very low or zero, then that should end the inquiry. However, if the answer to the question is that the odds are sufficiently great as to make policymakers worry, say 20 or 25 percent, then the second question that must be asked is what are the odds that government intervention would yield a better result for society in general and widget manufacturers in particular. I believe I can demonstrate first that the odds of U.S. Rail engaging in the destructive exercise of monopoly power are quite low and second that whatever the odds of such pricing behavior occurring, the chances are significantly greater that government intervention would yield a significantly worse result. In terms of the question I posed earlier in this talk, I will demonstrate that U.S. Rail is unlikely to engage in pricing behavior that will bring about significant reductions in output while on the other hand, government intervention is quite likely to do so.

"In deciding how to price its transportation services to these widget manufacturers, U.S. Rail has available two pricing models: It can charge a uniform monopoly price, set where marginal revenue equals marginal costs, or it can attempt to engage in price discrimination where each manufacturer is charged what it can bear. Furthermore, as I mentioned before, it will want to establish a volume-sensitive rate schedule for each manufacturer.

"Economists are uniformly in agreement that a company in U.S. Rail's position is significantly better off by eschewing uniform monopoly pricing, establishing instead prices that differ in relation to each shipper's ability to pay and that embody volume-sensitive schedules. Although it would take more time than available here to take you through the specifics necessary to demonstrate the validity of this assertion, I assure you that by pursuing a price discrimination strategy, instead of a uniform monopoly pricing strategy, U.S. Rail will earn substantially higher profits overall. Moreover, a price discriminating railroad such as U.S. Rail has a strong profit incentive to be right as much as it can in setting prices to its various customers no higher than they can afford to pay. To be sure, the railroad is likely to be wrong from time to time and set the price either too high or too low. However, most railroad managers can be expected to take a long-term view of their company's fortunes and err on the low side in setting prices so as to insure that manufacturers are not driven out of business.

"Nevertheless, there is the risk that U.S. Rail will make a mistake as to a particular widgets manufacturer and charge it more than it can afford, thereby driving it out of business. What is the likelihood that we can decrease the odds of this happening by government intervention? I submit the odds are quite poor, for if we opt in favor of government intervention to prevent widgets manufacturers from occasional mistakes by railroads, the only option available is regulation.

"And based on 95 years of experience with regulation, we have strong reason to believe that regulation is very likely to have adverse output implications, certainly in excess of any adverse output implications that might arise from a natural monopolist that has both the incentive and ability to engage in price discrimination. This is so for several reasons. First, and probably most importantly, regulators make pricing decisions for regulated companies in a highly charged political atmosphere with less than complete concern for pure economic performance. Secondly, even the regulator who is concerned only with achieving optimal economic performance is virtually unable to make the optimal economic decision because of imperfections in the administrative information gathering and decisionmaking process. You can be sure that the regulator is likely to set a price either too high or too low, but only rarely, and by coincidence, will the regulator set the price at the optimal level. And if the railroad regulator sets the price too high, the output of widgets will decrease. If he sets the price too low, the output of widgets will be artificially increased in the short-term but decrease in the long-term as railroads find it impossible to finance long-term maintenance and necessary reinvestment.

"Thus it seems quite likely that output will be less adversely affected if a natural monopolist is left to price discriminate than if we attempt to regulate the natural monopolist. We are left to conclude, therefore, that any regulatory attempt to eliminate discrimination by companies with market power is likely to have adverse output implications and therefore should be eschewed."

On the issue of joint-line rates, Mr. Seiden said that joint-lining probably will tend to diminish over time and that negotiations for joint-line rates probably won't be as common in the future. That, he said, is because major trucking companies are likely to set rates for through routes and then act as contractor for interline services, with other carriers performing the services as agent or subcontractor. He added that such arrangements would not violate the antitrust laws when entered into for legitimate business purposes.

"Carriers that interline freight between themselves in order to construct a through route for a particular shipment are partners, not competitors, with respect to that shipment," said Mr. Seiden. "In terms of an output reduction analysis, permitting carriers to establish such relationships tends to increase, not decrease, output."

Returning to the central question the division poses in every analysis—whether the conduct is likely to reduce output—Mr. Seiden said that if the answer is, yes, the division will intervene aggressively with criminal or civil procedings to bring such conduct to a halt. If the answer is, no, he added, the division is prepared to say so publicly either in a Busines Review Procedure letter or in a friend of the court brief in a court case.

[Exhibit D]

Remarks of John A. Creedy Before the National Coal Association and Edison Electric Institute Seminar

February 28, 1983

GOVERNMENT DEFENDS MONOPOLY--AN HISTORIC SWITCH

It is a pleasure once again to participate in an EEI-NCA seminar on transportation policy.

There's a lot of current frustration among shippers and water carriers that the current Staggers Act deregulation program is not promoting competition as it was intended that it should.

We share a lot of this frustration with our coal industry customers. As you know, WTA is a litigating partner with NCA and the Coal Exporters' Association in opposing the effort of the railroads to exempt all export coal. Our grain shipper and port friends are partners with us in appeal to the New York district court on the rail contract rate rules. A number of electric utilities were litigating partners with us on the minimum rate issue last year. All these issues have in common the goal of preserving opportunities to compete in transportation and moderating monopoly extortion.

More and more, there is recognition that shipper interests and water carrier interests are parallel. On the long haul of heavy loading bulk commodities and some non-bulk commodities, water transportation is the only practical alternative to rail transportation. Rail-water connecting service is frequently far more economical than all-rail services, but can be eliminated as a competitive force by the closing of rail connections.

Water carriers are powerful allies in keeping rail freight rates moderate and providing incentives for improved rail efficiency.

We thank our many coal industry friends for their help for us and for themselves in the WTA complaint case against the Chessie and the N&W last year. Railroads were charging $1 to $6 a ton more for export coal than domestic coal to the river, just because it was for export. Precisely the same coal transportation service was offered. An N&W vice president told a Senate Committee frankly that the disparity was designed to protect the rail haul to the Atlantic

seaboard from the competition of the rail-water route via New Orleans.

As you know, the strength of our position, plus effective coal industry support, persuaded the Chessie and the N&W that they were in a no-win situation, and they dropped the export rates to the domestic level. As you also know, Chessie is trying to reestablish some sort of disparity by taking increases on the rates to the river but not on the rates to the Atlantic seaboard. So far, the difference is minimal--but we're watching what they do with interest, needless to say.

My topic today is to talk about some of the fundamental reasons for our frustrations with government in the competitive rate-making area. Transport policy in the Federal establishment is made not only by the ICC but in the Justice Department and the Department of Transportation.

Federal Railroad Administration is active. We haven't yet persuaded the Maritime Administration to get busy to promote water carriers as a competitive force and balance out what the FRA does, but we are getting MarAd surrounded on the issue. We hope they will soon see that they have no choice.

The philosophies we see expounded in the weighty filings of these Federal Agencies have a lot in common. As one reads them, one realizes that a common thread runs through them. They all seem to work from the same handbook--and what the handbook says is certainly not likely to promote vigorous competition in the real market place, however neatly the theoretical circle may be closed.

What seems so strange about this philosophy is that it is so different for transportation than it is for the manufacturing economy. Justice, particularly, seems to have blinders on when it comes to issues of promoting vigorous transport competition. They file papers and make speeches defending monopoly practices that would enrage them if someone tried the same tactics outside the transport industry. Some sort of historic switch away from the traditional procompetition, anti-monopoly policies of the government may be taking place.

The Justice Department may say in its briefs that it is "charged with the responsibility for enforcing the antitrust laws and for

furthering the nation's fundamental economic policy of competition," but increasingly the government seems to be coming down on the wrong side.

The most extreme statement of Justice's current philosophy appeared earlier this month in a report in Traffic World of a speech by Elliott Seiden, chief of the transportation section of the Justice Department. He explains why he is totally unconcerned with the shippers' problems over market dominance. If you follow his reasoning to its logical conclusion, there would be no maximum rate regulation at all. Indeed, he would argue that the railroads should be allowed to do anything they please in pricing their product, and the shipper should have no recourse at all. Common sense should suggest that he is certainly on the wrong side of that question.

What catches the eye in Mr. Seiden's statement is the first assumption of the hypothetical example he gives. In his description of a situation in which a Los Angeles manufacturer of widgets is being charged 50 percent more for transportation than his San Francisco competitor, Mr. Seiden accepts the fact that a railroad "is the only transportation reasonably available to the Los Angeles company." In other words, the railroad has a total monopoly.

It startles one that he apparently regards that as allowable in the first place. In any other industry, Justice would be out there with all its powers in action making good and sure that the monopoly was broken up. National policy has it that monopolies must either be broken up or regulated. Abuses such as discrimination, over-pricing, poor service, all stem from monopoly, so national policy has it. Competition is the cure for high prices, discrimination or any other abuses.

In fairness to the Justice Department, if they had been in charge of the rail merger policy and not the ICC, there would probably not have been a rail monopoly in Los Angeles as described in the hypothetical case. William Baxter, Assistant Attorney General for Antitrust, testifying before the Senate Judiciary Committee last year, pointed out that Justice and ICC had not always seen eye to eye on the competitive aspects of rail mergers. He cites the ICC's BN merger decision as one Justice had appealed

unsuccessfully to court. It should not have been any surprise when the Milwaukee went into bankruptcy, Baxter said, "leaving us with the unfortunate situation that two strong roads are now merged and do have a position of substantial market power across the northern tier."

Being helpless to change the merger policy of the ICC, however, is no excuse for being indifferent to the results of such policy. There is, particularly, no excuse for Mr. Seiden to appear as an apologist for the practices which inevitably result from the Department's inability to prevent the monopoly in the first place. Justice should be trying to find other remedies for abuse of monopoly power if it feels it is unable to break up the monopoly. Instead, it more or less consistently appears in defense of the monopolist and against those who are seeking such remedies. One imagines the railroad brass having a difficult time keeping a straight face as this philosophy unfolds.

The Justice philosophers, naturally, have a difficult logical problem in excusing monopoly behavior, as they do. They argue that government should not intervene to control monopoly behavior because, after all, while the monopolist is not disciplined by market forces, he is disciplined by his own self-interest. That self-interest can be relied upon to set a price that may well be extortionate and may appropriate most of the manufacturer's profits but will not actually put him out of business. And even if it does, through some error in the monopolist's judgment, the government should not intervene, because there is plenty of competition in the manufacturer's market, someone else will take up the slack, including, of course, the manufacturer who benefits from the discrimination, and there will be no diminution in the total output, Mr. Seiden says.

As one thinks back over some of the famous antitrust cases, one inevitably asks why the Justice Department didn't accept this philosophy that self-interest protects the public when General Electric monopolized the electric lamp business or when IBM or AT&T abused their market power, or when any other monopolist who has been on the antitrust hot seat in the last 80-odd years exploited his leverage to pick the pocket of the consumer.

Mr. Seiden goes on to say that regulation has been such a failure that it is better to let the abuses continue than rely on regulation as a remedy. "You can be sure," he says, "that the regulator is likely to set a price, either too high or too low, but only rarely and by coincidence will the regulator set the price at the optimal level. And if the railroad regulator sets the price too high, the output of widgets will decrease."

Therein, it seems to me, Mr. Seiden contradicts himself. A high price should have the same effect on the output of widgets whether it is set by a monopolist or a regulator. Or am I missing something?

The main argument of Justice against rate bureaus is that they lead to high prices and discrimination. But in the case of the Los Angeles manufacturer facing a 50 percent discrimination against him in a rate bureau, he would at least have had the near-certainty of independent action from the railroad serving him. With a monopoly he has no hope at all.

Mr. Seiden's line of argument shows remarkably little insight in dealing with what is a growing problem, one which could well deprive the country of its bright prospects for expanding its exports of coal. Already electricity rates are so high due to extortionate pricing of coal transport services that many of our energy intensive industries are being forced to flee the country. Many aluminum reduction plants, to say nothing of zinc and other such plants have been forced to close. I recently heard that the only expansion in aluminum production capacity on the North American Continent is taking place on the St. Lawrence river, where Quebec hydro power is still available.

Why then, doesn't Justice think of applying some of its other remedies and simply adapt to transportation the basic principles it has found so effective in the unregulated economy? Conspicuous by their absence in transportation are the civil and criminal penalties for monopoly behavior which make the antitrust laws so effective. Would Justice join WTA in seeking to apply an effective deterrent for anti-competitive practices in transport?

Let us now see what practices Justice finds abhorrent in the non-transport market place which might be examined in a transport

context and might, indeed, fit the transport situations. If prohibited and deterred by severe penalties, there could be a breakthrough to a much more procompetition position than the present apologies for the abuse of market power.

In the "historic switch" some are beginning to suspect is happening at Justice, would Justice walk away from Otter Tail if a new case involving the same basic facts were presented? If not, why not legislate the Otter Tail principle for transportation and provide civil and criminal penalties for abuse? Wouldn't that be more logical than the current strained reliance on self-interest of a rail monopolist?

What is Otter Tail? A community out west got fed up with the level of its electricity rates and found an alternative source of electricity some miles away. How to connect its local lighting system with the cheaper power? The community was served by Otter Tail Power Company whose lines ran to the cheaper source of power. Otter Tail had a monopoly of the access route. The power company was asked to wheel the cheaper power over its lines. Otter Tail refused. Justice went after that one and the community got its cheaper power.

We have the same refusal to serve with railroads. Whether it is a switching rate by Chessie that would shock the conscience of a burglar or the closing of a joint route by Conrail, it amounts to the same thing, a refusal to serve and a substantial lessening of competition.

It may not be too hard to persuade Justice of the fact. They would not defend the ICC in the famous Lake Carriers' case involving coal to a Great Lakes utility. The railroad monopolized both the all-rail service to the electric utility and the rail portion of the rail-water service competing with it. By holding the rate high to the port, in relation to the all-rail rate, the railroad so arranged it that if the Great Lakes carrier's rate were zero, it could not have competed in the market. The Cleveland court saw the analogy with Otter Tail and mentioned possible antitrust implications in its decision reversing the ICC.

Now we hear of similar cases involving the closing of routes between the Conrail and Chessie, with Justice on the Conrail side.

If you've heard me expound the Lake Carriers' principle over the years, you would think I myself wrote Chessie's statement which I quote:

"Chessie is victimized by being short-hauled; it is deprived of the opportunity to compete for traffic and instead is relegated to the role of a switching carrier." Chessie goes on and the following is pure WTA. "If this were the result of hard competition resulting from greater cost efficiency generated by Conrail, Chessie could have no quarrel with the result. The loss is simply the application of Conrail's geographic muscle with no justification in the way of cost savings."

The essential point is that in closing a joint line route to favor its single line route, Conrail has closed out a competitive alternative that may be equally efficient or more efficient. Chessie is retaliating. Neither practice should be permitted. As the National Industrial Transportation League points out, in commenting on this case, there is a "growing pattern of closings of efficient gateways between carriers, cancellations of joint rates, and reciprocal switching, all of which have narrowed shippers' options and could increase their costs."

The Justice Department should see that the temporary lowered rate of Conrail is not the important point here. Monopolists always begin by lowering prices. It is the narrowing of the shippers' options, the lessening of competition, that is important. Vigorous competition will give the shipper far greater assurance of lowered rates than the self-interest of the monopolist on which Justice seems to be relying.

The current law of the land on rail-water relationships is instructive here. Where a rail-water service competes with the all-rail service, the rate and service on the rail leg of the water connection must be comparable, cost considered, with the all-rail alternative. Why should not Justice support legislation providing a prohibition of departure from this law for competition between railroads and back it by treble damages and thus be consistent with

their positions in the non-transportation economy. Let the railroads regulate themselves on whether they want to risk abusing the principle? It's a principle universally applicable to both rail connections with water carriers and could readily be applied to govern railroad connections with other railroads.

Justice should not be on the side of Conrail when it is trying to pull off a squeeze play against Chessie any more than it should be on the side of the Chessie when it is trying to do the same thing to Conrail. It should just come down hard against the squeeze wherever it may find it and so promote more effective competition. It is competition, not any soft notion such as "self-interest" of a monopolist that produces low rates for the consumer, better service, more capacity, and the like.

After all, if you followed the self-interest idea to its logical conclusion, you would empty all the jails. Obviously, it is in everyone's self-interest to stay out of jail.

But our laws take into account human nature. For thousands and thousands of years, society has witnessed the practical reality of unbridled human greed. This powerful and wholly reliable force in commercial affairs is bridled, regulated and channeled by the forces of competition. In straining for the greater profit, competitors seek ever-greater efficiency and lowered prices. So when Justice begins saying that there may be some other force, "self interest" for example, that can be substituted when the market forces don't work, there is true cause for alarm that "an historic switch" is taking place.

Where there is monopoly power it will be exploited for the private rather than the public interest. It is essential to provide remedies for abuse. It may not be ICC regulation. We would certainly not mind having Justice enforcing a prohibition against undermining the competition of the rail-water with the all-rail service if they would first "confess error" on this apparent and disastrous "historic switch" toward relying on the benevolence of a monopolist.

The government is now pondering whether it will back a bill recently introduced by Senator Bob Packwood of Oregon to substitute a vague "public interest" test for the present law on rail entry into

water transportation. The present test is the one Justice ought to like. Rail entry into barging is permitted provided such entry doesn't "exclude, prevent or reduce competition." The Packwood bill, S. 48, invites the ICC to look at other aspects of the public interest, including lessening of competition, in determining the outcome.

When one thinks of all the items one would list under public interest--low rates, improved quality of service, ample capacity, and the like--it is hard to think of any public interest item that is not more reliably delivered by competition than by any other force. Are we again, in this bill, being asked to rely on the self-interest or good will of the monopolist? Is this the trend?

That Senator Packwood should be introducing this bill is extraordinary. As Mr. Baxter has confirmed, monopoly power is indeed a problem in the northern tier states thanks to the ICC's fuzzy notions on competition. To use one example, giving BN an opportunity to gobble up their Columbia River competition would only make their grasp more far-reaching. We would hope Justice would see that and not support a change in the law to endow ICC with such a vague and dangerous standard.

We hope that on reconsideration the Justice Department will come down on the right side of these issues and, in the phrase of one of their recent pleadings before the ICC, devote themselves consistently to "furthering the nation's fundamental economic policy of competition."

AMERICAN TRUCKING ASSOCIATIONS, INC.

STATEMENT OF EDWARD V. KILEY, SENIOR VICE PRESIDENT

Senator ANDREWS. The committee clerk reminds me that we do have a series of questions to get to after your opening statements, so as we move ahead to Mr. Kiley, I would ask you to keep your summaries brief. Remember, they will all be printed in the record as if you gave every word.

We now appreciate the opportunity to hear from Ed Kiley, senior vice president of the American Trucking Association.

Mr. KILEY. Thank you very much.

We appreciate the opportunity to appear before you today on this panel of intermodal transportation. We have a more detailed statement which I would like accepted for the record. I will sum it up briefly.

FREIGHT MOVEMENTS

If intermodalism includes participation in freight movements by various transport agencies, regardless of the relative participation of each, then it certainly is not new. Adequate motor carrier service at origin and destination is vital to the vast majority of freight movements.

However, we are sure that in discussing intermodalism today we are talking about participation by the various transport media in some portion of the line-haul move. From this standpoint the motor carrier industry regards intermodalism as synonymous with piggyback or TOFC.

The issues, therefore, are what can be done to expand, or improve piggyback service, and, what obstacles may exist to further expansion or improvement.

PIGGYBACK SERVICE

We believe piggyback service can be expanded and improved. We have always felt this way. This is why, in the early fifties, when piggyback began to emerge as a promising transportation development, the motor carrier industry called attention to the lack of information on piggyback services and exactly who was offering what service and at what rates.

As a result of the trucking industry's inquiries, as well as inquiries by others, the Interstate Commerce Commission instituted an investigation of piggyback services. Out of this investigation grew the basic piggyback definitions that guided its development in the ensuing years.

It was also the trucking industry that challenged the discriminatory practices of the railroads under the various piggyback plans, particularly as they affected the services available to the regulated motor carrier industry.

This issue went all the way to the Supreme Court which upheld the trucking industry's contention that discrimination did indeed exist and it had to cease.

We cite this history to indicate the trucking industry's commitment to improvements in piggyback service, including fair and reasonable rates. However, there are misconceptions about piggyback service which we believe can impede future developments in the public interest.

Our more detailed submission cites these misconceptions. One is that piggyback service, as a substitute for a highway movement, is cheaper and more fuel efficient. This is not the case. This conclusion is often based on a comparison of piggyback rates with rates for the highway movement.

What is so often overlooked is that the rate for the highway movement is the rate for the complete service. The piggyback rate many times does not include the origin and destination costs. This is why total costs must be compared, not rates. When this is done, the argument that piggyback is cheaper than the highway movement loses much of its logic.

Another misconception is that piggyback traffic fills some magic niche dependent on average length of haul. While it is true that piggyback service has little, if any, attractiveness for the short hauls, it is not true that it necessarily has any advantage, or automatic designation for the longer haul.

Each prospective movement must be based on its own unique requirements, and relative cost. There is no magic formula. This means that we certainly must avoid any Federal action that would tend to require or favor piggyback movements under certain circumstances.

The most serious misconception of all is that the absence of common ownership is a barrier to growth and future development of piggyback service. Quite the contrary, we believe that common ownership would be an impediment to future development of piggyback service in the public interest.

In fact, the truth is that piggyback service would not have reached its present state if we had common ownership.

Piggyback service has its major impetus in the railroad industry's efforts to meet motor carrier competition. Piggyback was to give the railroads the ability to offer true point-to-point service, which was becoming more impossible every day with traditional boxcar service. Under common ownership, there would be no competition to meet; except with yourself.

Improved piggyback service also requires continuing improvement in transport technology. This means improved rail service, including modern equipment, and improved motor carrier services, also including more modern equipment.

In the case of the motor carrier industry this means vehicles whose weights and dimensions are compatible with highway design and capabilities. The trucking industry has historically struggled for such improvements. The railroad industry, on the other hand has fought these improvements. There is a long history of this obstructionism. It is touched upon in our main statement.

In conclusion, we believe that the future of piggyback is highly dependent on the improved technologies of both rail and motor carrier services. They can easily be blended together, as is being done today. This working together can, and should, be mutually beneficial. These benefits will in turn rebound to the shipper.

Common ownership is not necessary to bring this about—in fact, it could obstruct and impede it.

That concludes my summary, Mr. Chairman.

PREPARED STATEMENT

If I could for the record, I would like to make a correction in the main statement on page 17, the end of the first paragraph we say, "statute of limitations." I would like to change that to "terms of the contract." I will give the corrected statement.

Senator ANDREWS. The clerk will make the appropriate correction.

Thank you, Mr. Kiley.

[The statement follows:]

STATEMENT OF EDWARD V. KILEY

My name is Edward V. Kiley. I am Senior Vice President of the American Trucking Associations, Inc. (ATA), with offices at 1616 P Street, N. W., Washington, D. C.

The ATA is a federation with affiliated associations in every state and the District of Columbia plus thirteen national conferences. In the aggregate, ATA represents every type and class of motor carrier operation, both for-hire and private, in the country.

We appreciate the opportunity to appear before this committee and submit the trucking industry's position on intermodal transportation.

Contrary to the picture painted by the railroads and railroad publications,[1/] the American trucking industry is not against intermodalism. We believe every mode or combination of modes, should be allowed to exercise its inherent advantage. Indeed the purpose of the Motor Carrier Act of 1980 and the Staggers Rail Act of 1980 were enacted partly to achieve these goals of inherent advantage.

Truck/rail intermodal transportation means different things to different interests. If it means participation in freight movements by more than one form of transportation, regardless of the relative input of each form, then intermodalism has existed for years as far as the motor carrier industry is concerned. Adequate truck transportation at origin and destination points is vital to a substantially large portion of freight movements.

Discussions of intermodalism today, however, are more concerned about participation in the line-haul movements of freight by different transportation components. From this standpoint, intermodalism to the motor carrier industry

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1/ "The New Ballgame," Modern Railroads, (November 1979), p. 16.

means basically "piggyback" services and whether they can be expanded or improved. Therefore, in this presentation, "intermodalism" and "piggyback" are considered to be synonymous, although intermodalism is, of course, more than just piggyback. Motor carriers are involved in air/truck intermodalism and water/truck intermodalism.

Because of the great interest in truck/rail intermodalism, I will primarily limit my remarks to piggyback -- the placing of a highway trailer on a rail flatcar, with the sole exception being the section on freight claims. Should the Committee desire more comment on other forms of intermodalism, we will be happy to submit them for the record.

The motor carrier industry supports efforts to improve intermodalism. We believe there can be better cooperation between our industry and the railroads in expanding and improving piggyback service. As a result of the trucking industry's inquiries, as well as by others, the Interstate Commerce Commission many years ago instituted an investigation of piggyback services. Out of this investigation grew the basic piggyback definitions that guided its development in the ensuing years.[2/]

However, this improvement cannot come at the expense of either industry. In fact, future developments must be mutually beneficial. Intermodalism should be a symbiotic partnership, not a parasitic one.

My remarks today will cover six specific areas:

- o The market for intermodalism
- o The profitability of intermodalism
- o The needs of intermodalism
- o Common ownership

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[2] ICC, Movement of Highway Trailers by Rail, Docket No. 31375, decided July 30, 1954.

o Freight claims

o Hazardous materials

The Market for Intermodalism

Intermodalism is an old concept which has been heralded periodically as on the verge of a dramatic new breakthrough. For example, the energy crisis and rapidly escalating fuel prices were predicted to force line-haul traffic from truck to rail in general, and piggyback, specifically. Recently, the deregulation of piggyback traffic by the ICC has been seen as a force encouraging intermodalism. Both of the predictions are overly optimistic.

Piggyback carloadings last year totaled more than 1.9 million, 9.9% above 1981 levels and 3.5% of the old record set in 1979.[3/] But percentages can be misleading, especially when the starting figures are low, starting at a little over 5% of revenue carloadings in 1970 and growing to less than 8% in 1980. Piggyback's growth must be considered in light of its small percentage of total rail carloadings or motor carrier trailer movements. Paul O. Roberts, then with the Massachusetts Institute of Technology, perhaps put the growth of truck/rail intermodalism in proper perspective when he noted:

> "The container revolution on the North Atlantic was more rapid. The complete changeover of the liner trade to a small percentage of uncontainerized freight took less than ten years."[4/]

3/ There is much confusion about the amount of piggyback traffic. The Sept. 27, 1982, issue of Railway Age said, "...[T]hese reports on intermodal volume have been coming into question, because single trailer or container might be reported as two or three or even more "loads" if it's moved over two or more carriers and rebilled each time through a third party."

4/ Paul O. Roberts, "Consolidation: Key to Multimodal Freight Transportation?" Forming Multimodal Transportation Companies, edited by Clinton H. Whitehurst, Jr. (Washington: American Enterprise Institute, 1978), p. 25.

Implied in all these predictions is the assumption that with improved and expanded piggyback service, substantial numbers of highway trailers will be removed from the highways. This assumption cannot be supported because so little of all motor carriers' traffic is susceptible to piggyback. For example, high value, low density, short-haul movements will continue to be dominated by all truck movements. The only freight which is susceptible to intermodalism is "containerized" freight. Containerized freight is limited to that traffic which can be put into a 40', 45', or 48' semitrailer and travels substantial distances. The 1977 Census of Transportation indicates that about 3% of the manufactured tonnage moves over 1,000 miles in shipments of 30,000 pounds or more. In other words, 97% of the manufactured tonnage is not susceptible to piggyback given current economic costs.

A recent study shows the characteristics of piggyback traffic.

TABLE I

Mode	Average Shipment Size	Average Length of Haul
LTL Carriers	13 tons	300 miles
Truckload Carriers	15 tons	500 miles
Piggyback (TOFC)	25 tons*	1,148 miles
Carload	76 tons	642 miles

SOURCE: "The Changing Transportation Marketplace," a presentation by Booz, Allen & Hamilton to the National Railroad Intermodal Association, Seattle, WA, May 11, 1982.

* One can only wonder how many piggyback operations are obeying the maximum gross vehicle weight limits when the average 3-axle tractor weighs 15,750 pounds, the average piggyback trailer weighs 12,450, and the average load is 50,000 pounds for an average gross vehicle weight of 78,200. By comparison, the average gross vehicle weight of a truckload carrier is 53,760 pounds, 12,450 pounds for the tractor, 11,310 pounds for the trailer, and an average load of 30,000 pounds.

These are only averages and should be used to indicate that motor carriers cannot and do not operate profitably at longer lengths of haul.

Moreover, not only is the market for piggyback traffic small, but also it may be shrinking. Inflation has had the effect of changing the traditional truck/rail cost relationships. A recent study by the ATA indicates that inflation has increased the potential market share of motor carriers at the expense of railroads. The analysis also indicates that although fuel costs were lower over the period of 1977-1985 for piggyback than truckload motor carriers, the long-run total factor cost position of piggyback is deteriorating. This situation exists because piggyback costs are increasing faster than comparable motor carrier costs. For example, a recent Booz, Allen & Hamilton study found that rail labor had negotiated guaranteed increases that amount to 10.1% per year and that rail labor accounts for 50% of all rail costs. In contrast, the Teamsters Master Freight Agreement has increases of 4.5% per year. Non-union trucking has even lower labor rates and forces a "tremendous downward cost pressure on carriers using organized labor." For truckload motor carriers, labor is about 20% of total costs.[5/]

In addition, the recently passed Surface Transportation Assistance Act of 1982 ultimately will improve motor carrier productivity. This legislation permits 80,000 pounds gross vehicle weight, 102" wide 48' or twin trailers, which increases cubic capacity 32%.

These factors and more indicate that motor carriers have extended the length of haul at which they have lower

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5/ "Boxcar, TOFC and/or Rail Owned Motor Carriers? Coming to Grips with this Complex Strategy Question," a presentation by Booz, Allen & Hamilton, Inc., before the National Railway Association, San Diego, CA, January 25, 1983, p. 11.

total costs than piggyback. As Table II indicates, in 1977 truckload motor carriers had lower costs up to 824 miles than piggyback. With increased weights alone, the length of haul will increase to 874 miles by 1985 at medium inflation rates. If inflation remains at less than 5 percent, average motor carrier cost will be lower than piggyback costs up to 1,000 miles.

TABLE II

LENGTH OF HAUL AT WHICH IRREGULAR ROUTE MOTOR CARRIER COSTS ARE LESS THAN PIGGYBACK COSTS

	At 20 Ton Payloads (73,200 lbs. GVW)	At 22.5 Ton Payloads (80,000 lbs. GVW)
1977	824	854
1981		
Low	793	834
Medium	912	859
High	1,095	1,039
1985		
Low	1,060	1,001
Medium	907	874
High	1,530	1,511

SOURCE: Lana R. Batts, Roger W. Kolins, and Regina T. Selva, "Truck/Rail Competition: Projected Relative Intermodal Cost Advantages," Issues in Truck Sizes and Weights, Technical Report TSW-81-12, American Trucking Associations, Inc., 1981, p. 58.

In other words, the available market for piggyback is small at present. Furthermore, it may be shrinking. Because of these two factors, we do not believe improved piggyback service will remove a substantial number of trailers from America's highways.

The Profitability of Intermodalism

Containerized freight is the most competitively priced freight on the transportation scene today. As a result, it

is not usually the most profitable.[6/] In contrast, the transportation by rail of coal, which is non-containerizable and non-competitive, is very profitable.[7/] More and more people are becoming alarmed at the low profit margins in piggyback. Railway Age noted that:

> Profitability is also being looked at, and a number of roads are coming to the conclusion that "never have we done so much for so little."[8/]

The article goes on to note that one railroad had a 24% growth in piggyback and yet its president said intermodal business "currently does not produce a reasonable rate of return." In other words, while piggyback rates can undercut motor carrier rates to attract the traffic, it doesn't necessarily mean it can undercut motor carrier costs. It doesn't even mean that piggyback rates approximate costs. One can only wonder about the future of piggyback if it is continually reviewed as a "loss-leader."

It can actually be contended that the railroads are being harmed economically as a result of the move to piggyback. When piggyback prices do not reflect cost, not only is traffic diverted from trucks, but also from boxcars. Such shifting from boxcar results in additional losses for the railroads, increases the supply of unused boxcars, where railroads traditionally earn a higher return, and increases the need for additional capital for piggyback investment.

6/ Booz, Allen & Hamilton, op. cit., p. 13.

7/ Statement by Frank Wilner, Director of Waterway Studies, Association of American Railroads, as reported in Traffic World, May 18, 1981, p. 42.

8/ Gus Wetby, "Intermodal Equipment: A Time for Testing," Railway Age, March 1983, pp. 29-33.

Needs of Intermodalism

Reginald B. Short, director of intermodal sales and service for the then Norfolk and Western Railroad, is quoted as saying:

> "There is no panacea here [in intermodalism] that will automotically bring business to railroads. The competition isn't going to give up."[9/]

Mr. Short and Modern Railroads zeroed in on the "great need for increased productivity -- of labor, terminals, operations, and equipment, roughly in that descending order," if piggyback is to grow. Modern Railroads went on to list six goals for intermodalism if it is to come up to its potential:

- o Greater profitability -- the keystone of success -- will be achieved by reducing costs through technological improvement of terminals and rolling stock and through computer management of equipment to achieve maximum utilization. Marketing, pricing and sales must be directed at achieving profitable balanced moves with contact, backhaul and other rate innovations.
- o Greater support from management. The traditional setup of traffic subservient to operations and intermodal a tag-along to traffic must give place to a more market-oriented organization.
- o Greater productivity. Labor and equipment must be better utilized. Dedicated intermodal trains manned by reduced crews should operate between dedicated terminals. Terminals designed for run-through operation with a minimum of switching can be operated by motor carriers, either subsidiary or contracted,

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9/ "Growth Through Improving Productivity," Modern Railroads, November 1979, p. 20.

and should serve more than one railroad where possible. Work to eliminate archaic crew districts. Shorter more frequent trains spreading use of costly terminal assets over more hours of the day will increase terminal capacity.

- o Greater cooperation with motor carriers. Rails must develop the service and rates that will make private, common and independent truckers partners. Provide 45-foot [now 48 foot] highway-oriented trailer or container.
- o Greater cooperation between railroads is needed to tear down barriers to single-line pricing and Plan 5 truck-rail through service.
- o Greater innovation. Rails must take advantage of new concepts in operations, equipment and service, and they must market new innovative packages.

Notice all these items require a change on the part of railroads, not motor carriers.

We believe the railroads will be able to achieve these goals. Competition from motor carriers will provide the necessary incentive. Indeed, it was competition from motor carriers which provided the incentive for railroads to invest in piggyback in the first place. Without improved motor carrier productivity, railroads would have had no incentive to leave the 49-foot boxcar of the 1940's.

In fact, during the 1930's, the railroads attempted in many ways to retard improvements in motor carrier productivity, primarily by seeking artificially low truck sizes and weights. For example, a 1941 Senate Commerce Report entitled "Investigation of Railroads, Holding Companies and Affiliated Companies" exposed the early history of the railroad campaign against the motor carrier

industry.[10/] Again, in the 1950's, in Noerr Motor Freight, Inc., et al vs. Eastern Railroad President's Conference, et al, a U. S. District Court found that the railroads entered "into a conspiracy in unreasonable restraint of trade, the nature and purpose of which was to injure the truckers in their competitive position in the long-haul freight industry . . . ."

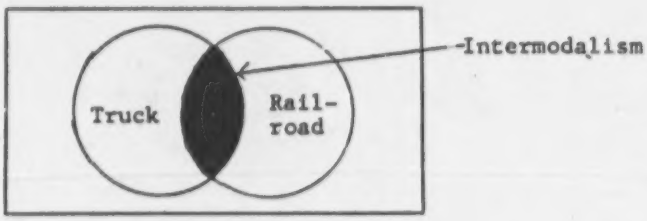
Such actions continue today. For example, in Missouri the railroads financed a front organization called People Associated for Tomorrow's Highways (PATH) which succeeded in overturning legislation which allowed 60-foot tractor semitrailer combinations and 80,000 pounds gross vehicle weight. Almost all of PATH's money came from four railroads or their subsidiaries: Kansas City Southern, Burlington Northern, Missouri Pacific, and Norfolk & Western. Most recently another railroad-sponsored group called Share Highways and Roads Equally (SHARE) has emerged in West Virginia, sponsored by the CSX Corp. and Norfolk-Southern, to lobby for a weight-mile tax on certain trucks.

It is not surprising the railroads, such as the Norfolk & Western (now the Norfolk-Southern) which does not own motor carriers, would seek to retard their productivity. But for a so-called intermodal company, such as the Burlington Northern or CSX, which has a financial interest in motor carriers, to favor inefficiency can only mean that they are not interested in reducing motor carrier costs or the costs of piggyback which competes directly with motor carriers.

10/ "Investigations of Railroads, Holding Companies, and Affiliated Companies," Additional Report of the Committee on Interstate Commerce Pursuant to S. Res 71, October 16, 1941.

Common Ownership

Motor carriage is a strong and viable mode because motor carriers own motor carriers. Railroads are a strong and viable mode because railroads are owned by railroads. Intermodalism will continue to grow if it can offer the best of each mode to produce low cost transportation. Intermodalism is much like the classical Venn diagram of calculus, the shaded intersect area represents intermodalism and combines the best of both modes.



A weak truck or rail segment will produce a weak intermodal segment. Because railroads have historically sought to weaken motor carriers by retarding their productivity (e.g., opposition to truck sizes and weights) or increase their costs (e.g., support for ton-mile taxes) as mentioned in the above section, railroads' dedication to piggyback is questionable.

Moreover, a recent study by the Massachusetts Institute of Technology found that ownership of a long-haul trucking company by a railroad did not encourage intermodal usage.[11/] At first, MIT examined the less than twenty railroads with trucking companies as an homogeneous group

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11/ A. F. Friedlaender, C. G. Decker, I. Goodman, and I. Harrington, "Intermodalism and Integrated Transportation Companies in the United States and Canada," Preliminary Research Report supported by the National Academy of Science Foundation Office of R. and D. Assessment, Massachusetts Institute of Technology, Sept. 1977.

and found common ownership encouraged intermodalism. But when MIT distinguished between the ownership pattern, the results were "somewhat contradictory." MIT distinguished between railroad-owned local motor carriers that are limited to pickup and delivery movements for the railroad, and railroad-owned intercity motor carriers which compete for long-haul intercity traffic. MIT found that ownership of a local trucking company encourages intermodal usage, while ownership of an intercity trucking firm does not.

Freight Claims

The deregulation of piggyback transportation by the Interstate Commerce Commission as well as Congressional deregulation of the airlines have produced chaos in the cargo loss and damage field. Confusion has been caused among members of the shipping community because shippers and receivers do not know what they are buying liability-risk-wise in the multitude of contract choices confronting them. The only solution a shipper/receiver now has to the dilemma facing him is an expensive and impractical one -- for protection he files claims with all parties to the movement and hopes that at least one will succeed. If he fails to file with the proper party timely, he may subsequently find himself barred by the terms of the contract.

This present liability "non-system" has resulted in unfairness to the trucking industry which is already in deep trouble from the recession and the ICC's deregulatory actions in the trucking area. Motor carriers participating in intermodal and multimodal movements have been swamped with perplexing and difficult claims problems as a result of the other modes' radical changes in their liability systems following deregulation of the airlines as well.

Basically, the problem is that the rail and air modes began drastically and chaotically limiting their liabilities

after deregulation. (Ocean carriers already had a limited liability system based on a strong allied insurance industry.) As consequence, motor carriers which participate in intermodal or multimodal movements often find themselves stuck unjustifiably with loss and damage claims for the full value amount because they do not operate under a limited liability system. They are by common law, by statute, and by the standard bill of lading contract virtually absolute insurers of the goods they haul. They have learned the hard way about such dangers in piggyback traffic, for example. The railroads are in the driver's seat with respect to this traffic and set claims and liability terms and conditions by their intermodal agreements. These are almost always substantially less than the risk the motor carrier exposes itself to by participating in the movement.

Motor carriers as well as shippers need:

(1) A uniform base rate liability system;

(2) A uniform simplified excess value liability system (air carriers use a similar system); and

(3) Uniformity of cargo loss and damage liability systems among modes with a centralization of appropriate rules and regulations.

Enactment of the above would go a long way toward solving intermodal transportation cargo liability problems and eliminating much of the adversary-style system presently in use with its multiplicity of variables and its confusion for shippers. Shortly after air deregulation, 25 major air carriers had in effect 18 different liability levels. Can you imagine 2,500 motor carriers with 1,800 different liability levels?

What is needed is a system, at least among competing modes, where the same liability level is preserved all the way through an intermodal or multimodal movement by all the carriers. Such a system would establish liability at a base rate upon which the shipper at his sole option (because he, and only he, has access to information on which the decision must be grounded) could limit liability by use of a uniform graduated value declaration.

Hazardous Materials

Hazardous materials transportation presents unique problems for intermodalism. Specifically, we have the following concerns:

(1) There are no specific requirements concerning the placement of shipping documents used to describe hazardous materials on the train;

(2) Hazard classification placards are displayed on the truck trailer, and not on the body of the flat car; and

(3) Not all of the train crew members will have information regarding the placement of hazardous materials on the train.

Let me briefly discuss each of these concerns:

Section 174.26 of Title 49, Notice to Train Crews of Placarded Cars, requires a copy to the shipping paper for each hazardous material shipment to be in the possession of a member of the train crew. The federal regulations do not specify which train crew member this must be; nor do they specify the location these shipping documents must be on the train. As a result, emergency officials responding to an accident will not know which end of the train to go to in order to get the documentation describing the hazardous materials. In many cases these freight trains can exceed a

mile in length. Therefore time spent in locating this documentation could be substantial. In order to alleviate this problem we recommend that the federal requirements should be amended to require the hazardous materials shipping documents be present in both the locomotive and the caboose, thus eliminating any question as to their whereabouts.

Our second concern relates to the placarding requirements. In TOFC operations only the truck trailer will display the required hazard classification placards. There are no requirements that the rail car also display placards. Section 174.8 of Title 49 requires that rail cars transporting placarded loads of hazardous materials be visually inspected for obvious defects of the running gear and for any leakage of contents. In the Thermal, California rail accident involving a shipment of radioactive materials the train crew stated that they did not notice the presence of radioactive placards on the trailer because they were inspecting the wheels of the rail cars and the placards on the trailer were located well above this area. Because of this and other closely related system failures, the train crew was not aware that hazardous materials were being transported.[12/] This situation should be corrected by requiring those flat cars carrying a placarded trailer to also display the appropriate hazard class placards.

Finally, we feel safety must be enhanced by requiring a document to be present in both the locomotive and the caboose indicating the position of each placarded car in the train. Section 174.26(b) of Title 49 currently requires this "except when the position is changed or the placarded

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12/ Derailment of Southern Pacific Transportation Company Train No. 01-BSMFF-05 carrying Radioactive Material at Thermal, California, Jan. 7, 1982, NTSB-RAR-83-1, Jan. 19, 1983.

car is placed in the train by a member of the train crew" emphasis added. We believe that all train crew members should be aware of the presence of placarded loads, and that a current document showing the location of each placarded car should be available at each end of the train.

Conclusions

Improved piggyback service requires continuing improvement in transport technology. This means both improved rail service, including modern equipment, and improved motor carrier services, also including more modern equipment. In the case of the motor carrier industry this means vehicles whose weights and dimensions are compatible with highway design and capabilities. The trucking industry has historically struggled for such improvements. The railroad industry, on the other hand, has fought these improvements. There is a long history of this obstructionism.

Railroads and motor carriers need to work together for their mutual benefit. Their services can easily be blended together, as is being done today. This working together can, and should, be mutually beneficial. These benefits will in turn redound to the shipper. Common ownership, however, is not necessary to bring this about -- in fact, it would obstruct and impede it.

ASSOCIATION OF AMERICAN RAILROADS

STATEMENT OF WILLIAM H. DEMPSEY, PRESIDENT

Senator ANDREWS. The next witness is Mr. Bill Dempsey, president of the Association of American Railroads.

Bill, we appreciate your taking the time to come here today.

Mr. DEMPSEY. I am delighted to be here with my colleagues from the other transportation modes and Government representatives and Jim Mann from industry.

Intermodalism, of course, comes under two heads, common ownership and the blending of the services as we have in piggyback. John Creedy stated their industry's historical position on common ownership. I will state ours.

We are in favor of the relaxation of the constraints because we would like to be able to offer a shipper a full line of service so that he can get the department store kind of service, being able to utilize whatever mode is the most efficient for whatever kind of transportation that shipper wants.

I may say I am not sure that John Creedy and I are in principle very far apart. He indicates as far as he can tell the existing law is substantially the same as Clayton and we, of course, wouldn't ask for anything different from the Clayton. All we ask for is Clayton so that the railroads and other modes will be treated the same as any other business in the United States so far as acquiring other interests are concerned.

The substantial lessening of competition is a fair one and adequate one. We go with that. As to piggyback, I find myself in substantial agreement with what Mr. Mann has had to say and it is not far out of line with what Ed Kiley has had to say. It has been a very important development for the railroads, for the motor carriers, and for the shippers.

Just to give you some indication of the strength of this kind of operation, last year in the midst of this dark recession in which the rest of our traffic was off about 14 percent, piggyback was up almost 11 percent. That is in sharp contrast to the mid-seventies recession when piggyback just went right through the floor, much worse than anything else.

That is due to a lot of things: the new development in facilities, heavy investment in facilities that the railroads have made, the yards and equipment, the kind of new technology that Jim spoke about, and in a very, very important way deregulation of piggyback together with the contracting provisions of the Staggers Act which has made it possible for the railroads to tailor their piggyback services to the needs of particular customers.

We would like to see it grow more and more, as some of the other witnesses have said.

WHOLESALING OR RETAILING

There is this difference of view as to whether wholesaling or retailing, to use the phrases that are most commonly used, is the best way to go. I agree with Jim that the marketplace is the best place to shake that out.

Some carriers have their motor carrier subsidiaries and they use them extensively in offering door-to-door service. CSX is one example. Southern does not have it.

So far as common ownership is concerned most of the major railroads have had motor carrier facilities for some time, grandfathered under the Motor Carrier Act. So common ownership is not new, but the kind of services that can be performed by the motor carrier subsidiaries is really the question.

A word about the concern that John Creedy expresses with respect to this matter of joint water-rail route on the one hand and single line railroad on the other. He has indicated that the railroads and the barges have cooperated in joint movements in many, many ways, and they have.

It has also been our view, as Mr. Seiden's view expressed by John, that where the water-rail route is truly the low-cost route, that it is then in the best interests of the railroad to use that route, of course unless the water carrier is trying to extract as its share of the joint rate an unreasonably high portion. That does happen. I am sure it happens the other way around as well.

So the kind of thing that John is concerned about really ought not to happen unless the railroad acts stupidly, and they don't do that often.

PROTECTION OF SHERMAN, SECTION 2

I don't know, and I have practiced antitrust law for a good while, I can't think of any reason why section 2 of Sherman is not available to a shipper who feels he is being pummeled by a railroad asserted to have a monopoly. Obviously this can't work unless the railroad had a monopoly.

As a matter of fact, my Association right now is being sued under Sherman, section 2. It is not the first time that elements of the industry have been sued under Sherman, section 2. Usually when John talks about that he is talking about Robinson-Patman. Robinson-Patman is not applicable because what we provide is the service and not goods.

If we are simply talking about injunctive relief or damage relief under section 2, as far as I know, if someone can show me immunity, I would like to have that because I would love to get rid of some of these suits.

Senator ANDREWS. You think under section 2 of Sherman on this two-legged shipment of grain or coal or whatever by water and rail the shipper would be protected against exorbitant ratesetting?

Mr. DEMPSEY. If indeed it is a predatory monopolistic practice.

Senator ANDREWS. If the railroad is charging four or five times as much to move that commodity over a mile of that short leg and it can be determined to be an especially high rate trying to take advantage of a situation, then would the captive shipper, the local grain elevator at the end of the line, the timber company at the end of a line, some other manufacturing company at the end of the line, a coal mine, say, at the end of a single line, be given similar transportation protection?

PROTECTED BY STAGGERS ACT

Mr. DEMPSEY. I think anyone who has standing under section 2 could bring a suit. They don't do it because the Staggers Act protects captive shippers and they can't prove there is a monopoly unless they can prove that they are indeed a captive shipper.

So far as Staggers is concerned, nothing is changed. If there is an abuse by the railroads of their ratemaking, the preexisting Interstate Commerce Act remedies are still available unless, as I say, the shipper can indeed prove it is captive in which case he loses section 2 as well.

Senator ANDREWS. You say Staggers should be protecting this country's grain elevator for the captive shipper?

Mr. DEMPSEY. If he is a captive shipper.

Senator ANDREWS. I have heard an awful lot of little grain elevators at the end of the line and other companies at the end of the line saying that Staggers simply is not working.

Mr. DEMPSEY. I can appreciate that, Mr. Chairman. All I can say is that there is nothing in the statute—it is very difficult to deal with individual cases without knowing the facts.

Senator ANDREWS. You think mainly the recourse is injunctive relief where they go to the court?

Mr. DEMPSEY. I think that type of relief is available to them. I think it would be foolish to do it, because the equivalent relief is available under Staggers if they can prove they are captive shippers.

I don't think anyone would want to undertake the hideous expense of a Sherman Act case if they have a remedy available to them. That is why I suggest these suits are not brought.

Senator ANDREWS. Mr. Creedy has a comment to make.

Mr. CREEDY. The problem there is that a lot of people, as the Justice Department explained it to us, are fuzzy about whether, when there is a regulatory framework which is supposed to provide the remedy and does not, you can get to the Sherman Act. It is not at all clear.

There are some people today who are trying it and it may be clarified, but we think that what is needed is a clear right of damages for transportation abuses that is not clouded by the jurisdictional question between the courts and the Commission, which is a very substantial one.

Mr. DEMPSEY. I would agree with John about that. If you really want to get into this, there is no question in a Sherman Act suit defense of primary jurisdiction would be raised. One would have to look into whether, under the Staggers Act an effective administrative remedy is available. That is ordinary antitrust law.

That is the same kind of defense that can be raised with respect to any other kind of lawsuit where there is alleged to be an administrative remedy available. We are concerned that the railroads be treated the same as everybody else and in that respect they are.

PROBLEMS INVOLVING SOO LINE

I should just perhaps say one not very informative word about the situation with respect to two-rail movements. That is the Soo Line situation in which you have a joint movement with the Soo Line and another railroad and that railroad has a single line available between the same two points.

I say I can't be very informative because there is a difference of opinion in the rail industry now about what is going on. There have been a number of cancellations of through routes. Some railroads have taken exception to that. Others think that this is an effective and proper means of competing.

We are looking into it right now and we are going to see whether or not we can have an industry position on this, but we don't right now.

Mr. MANN. Mr. Chairman.

Senator ANDREWS. Mr. Mann.

Mr. MANN. I understand that the National Industrial Traffic League has petitioned ICC to take a look at this. John was alluding earlier to the fact that somebody ought to be doing it. I agree with them, they should be.

I am not sure I will state a position one way or the other, but it is a hot topic right now. Apparently they have not learned whether the Commission has agreed to open the proceeding, but they have been asked by the National Industrial Traffic League.

Mr. DEMPSEY. That is right, the league has petitioned for a ruling and are proceeding. We have taken no position whether or not there should be one. It is clear, I think everyone will agree, that some through routes, probably a lot of them, ought to be closed because they are circuitous, they are not the most effective and efficient way of moving the goods.

The complaints are that it has gone beyond that. As I say, I am not prepared to say anything on the merits of it right now. I just want to let you know where we are.

I think that is all I have to say, Mr. Chairman.

PREPARED STATEMENT

Senator ANDREWS. Thank you, Mr. Dempsey. Your prepared statement will appear in the record at this point.

[The statement follows:]

STATEMENT OF WILLIAM H. DEMPSEY

My name is William H. Dempsey. I am President of the Association of American Railroads which is a voluntary, unincorporated, non-profit organization composed of member railroads operating in the United States, Canada, and Mexico. These railroads operate about 97 percent of the total mileage and have approximately 97 percent of the total operating revenues of all railroads in the United States.

I am pleased to appear before you today to discuss the growing importance of intermodalism in this Nation's transportation system.

"Intermodalism" may involve the act of transportation or the ownership of the means of transportation. Intermodal transportation involves transportation involving two or more modes. Shipment of grain by rail to a port for loading and transportation by barge to destination is an intermodal movement, as is shipment by motor carrier to a rail "piggyback" loading ramp and subsequent transportation by rail. The former has existed about as long as the railroads have. The latter, so-called "piggyback", is a relatively new development which has made tremendous strides in the recent past and will continue to grow and improve and bring about greater transportation efficiencies.

Intermodal ownership may involve the ownership or control of one transportation mode by another or common ownership or control of both by a third entity. There are certain legal and administrative impediments to establishment of such "intermodal" entities but, slowly, those impediments are eroding. And we support the elimination of those impediments. We think the transportation companies of the future will involve efficient combinations of the modes -- much more so than today.

But even without common ownership the interchange of traffic among the three surface transportation modes can produce important efficiencies. While there have been and continue to be differences among the rail, water, and motor carriers on the question of intermodal ownership, we can all agree that there are instances where intermodal cooperation can produce

significant improvements in the quality or price of the transportation service.

In the railroad industry the most spectacular growth in intermodal service is with "piggyback". That is the movement of truck trailers and containers on railroad flat cars -- so-called "TOFC" (trailer-on-flatcar) and COFC (container-on-flatcar). Statistics on piggyback traffic were first maintained in a separate category by the AAR in 1955 when 168,160 piggyback cars were loaded. Except for some recession years in the mid-1970's and a slight drop from 1979 to 1980, piggyback traffic has advanced steadily and reached a peak of more than 1.9 million cars in 1982.

The performance of piggyback traffic in 1982 is nothing short of remarkable. During one of the worst recessions this country has suffered in the past forty years, and in a year that saw the number of carloads of freight fall by over 14 percent from 1981 levels, railroad piggyback service increased by 11 percent. The explanation for this success is found in the continued and increasing investments in facilities, the improvement of equipment, the speed of operations, and the deregulation of TOFC/COFC in March, 1981 by the Interstate Commerce Commission.

In the area of facilities' improvements, the railroads took impressive steps in 1982 alone. In Chicago, one railroad recently invested $9 million in converting a freight classification yard into an intermodal facility. In Jacksonville a carrier has invested $2.3 million in an existing piggyback terminal to increase its capacity. In the Dallas area, still another railroad opened a new piggyback terminal complete with an overhead crane and in Northern California and Portland, Oregon another railroad announced construction of a new terminal and expansion of another.

These investments in facilities are being accompanied by changes in equipment in recent years and in very sizable investments in equipment. The latter are especially impressive and indicative of the railroads' commitment to, and the car

suppliers' faith in, piggyback. New lightweight "skeletal" cars are coming into more common use. One of the first was developed by the Atchison, Topeka & Santa Fe -- the so-called 10-pack or Fuel Foiler -- now in regular service. Itel Corporation has acquired the rights to this piece of equipment and is marketing it industry-wide. Trailer Train, which is owned by 27 railroads and supplies intermodal cars to the railroads, is in the midst of development and testing of various prototypes. The Southern Pacific now has in regular service new "Double Stacking Container Cars", which are low profile, "articulated" cars capable of transporting 10 containers.

Still one more development is the Bi-Modal Corporation's "RoadRailer" which consists of a trailer much like any other truck trailer except that it also carriers a set of steel wheels which can be lowered to enable it to move over rail as well as highway, thereby eliminating the need for a flatcar altogether. The RoadRailer has received substantial testing on the Seaboard System, the Illinois Central Gulf, and in Canada, and is now in regular service between New York City and Buffalo.

The railroads' investments in new and expanded facilities and these new types of intermodal equipment are made in the interest of better capitalizing on the energy-saving features of intermodalism and to increase the speed of operation between origin and destination. The savings in time and money are important to the railroads, to their shippers, and to the ultimate consumers.

One final development which I cannot neglect is, of course, the decision of the Interstate Commerce Commission to exempt TOFC/COFC railroad operations from federal regulation. The Commission based its decision on findings that federal regulation of piggyback service was no longer necessary to carry out the national transportation policy or to protect shippers from abuse of market power. That deregulation, and before it the ratemaking improvements, including the contract provisions of the Staggers Rail Act, have allowed the railroads to custom-tailor their services to fit particular needs of their shippers. It has also enabled the railroads to compete on a more equitable

basis with the substantially unregulated motor and water carriers. As the economy picks up and the transportation business improves, the railroads and intermodalism will be in the forefront -- actively and freely competing and cooperating with themselves and the other modes to provide the best, fastest, and cheapest transportation this Nation has ever known.

The cooperation between the modes I have just referred to is essential if intermodalism is to reach its full potential. Railroad and motor carrier cooperation is growing as a result of the flexibility granted the railroads by the Staggers Act, subsequent ICC decisions, and the motor carriers' recognition of the energy and cost savings growing out of participation with the railroads in piggyback service.

Still another type of intermodal cooperation involves international movement of containers. These "railbridge" services, whereby marine containers are moved to and from ocean carriers across part or all of the United States on a single bill of lading, are competitive with all water service.

One example of this type of intermodal cooperation is an agreement between three railroads, an ocean carrier, and a group of freight forwarders involving traffic originating in the Far East. Containers shipped from the Orient are sent to Seattle and Los Angeles for subsequent rail transportation to major eastern cities. Once the containers are emptied at destination, the freight forwarders load them only for destinations on the West Coast which are ports of call for the ocean carrier. The containers are then available for reloading by ocean carrier to the Far East to begin the cycle again. The service is faster and cost-competitive with alternative all-water routes.

Cooperation between the railroads and the inland water carriers or barge lines occurs mainly in the bulk commodity trade. For example, a railroad in the Midwest has entered into contracts for the movement of large volumes of grain for delivery to the "Quad Cities" area on the Iowa-Illinois border. There the grain is loaded on barges to continue its journey on the Mississippi River to its destination. That same railroad has

another contract movement of coal from Indiana to Chicago for transfer to barge for further transporation on Lake Michigan to destination at Green Bay, Wisconsin.

Still another railroad has entered into a number of arrangements for the joint rail-water movement of western coal to the Midwest and beyond. The Burlington Northern, through close cooperation with the American Commercial Barge Line, regularly transports Power River Basin coal to a St. Louis terminal for transfer to barge and subsequent delivery to Cajun Electric in Louisiana. This is true despite the availability of an all-rail route. The BN also delivers coal to terminals in Superior, Wisconsin, the Twin Cities, and East St. Louis, among others, for subsequent water transportation to destination.

Rail-water cooperation has been fostered by the provision in the Staggers Act permitting the railroads to enter into contracts. Cooperation on an equal footing was more difficult in the past because railroad traffic was strictly regulated while most barge traffic was not.

To conclude, the railroads believe that where intermodal cooperation can be shown to yield increased efficiencies the competitive nature of the transportation industry is all that is necessary to assure the continued growth of intermodalism. The governmental role should be one of permitting and encouraging the water, motor, and rail modes to compete aggressively and to cooperate as necessary in providing the best transportation service attainable.

DEPARTMENT OF TRANSPORTATION

STATEMENT OF CHARLES SWINBURN, DEPUTY ASSISTANT SECRETARY FOR POLICY

Senator ANDREWS. Our next witness is the Deputy Assistant Secretary of Policy for the Department of Transportation, Charles Swinburn.

You are the one that looks over this from the standpoint of the administration. So we will appreciate your comments.

Mr. SWINBURN. Let me express my appreciation also for being invited to sit on this distinguished panel today.

I do not have a prepared statement. I was going to make some brief remarks. Most of them have been made, inasmuch as they cover the history of intermodalism, by other panel members.

INTERMODAL OWNERSHIP

Let me just say that it is clear there are quite a few examples of intermodal ownership in existence today. You have ticked some of them off. It is not at all clear yet, however, given the recency of many of these examples of intermodal ownership, that the benefits and economies that the theoreticians will say will accrue to intermodal ownership per se have been achieved.

It think it will be some time before we can point definitively to intermodal ownership literally improving the efficiency of the transportation movement, particularly as opposed to intermodal movements by different modes of transportation not commonly owned.

I just want to point out that whatever our sympathies toward intermodal ownership, I do not want to say at this point we have a track record that we can point to and say it is going to result in tremendous efficiencies. I think it is right that now is the time to ask the question about intermodal ownership.

Should we be removing restraints and going further than we have? There have been recent developments that lead one to want to ask that, including the ICC's recent decision on special circumstances, the railroads extending their trucking operations including TOPC/COFC deregulation, et cetera.

As you know, a bill has been introduced in the Senate that would remove many of the existing restrictions to intermodal ownership.

Within the Department we are literally on a daily basis discussing this subject, deciding what position we are going to take when asked to testify at the end of the month on that bill. It is obvious that historically and very recently the Department's general policy has been toward removing restrictions on commercial activities of carriers and in the intermodal area generally toward removing those kinds of restrictions also.

We filed in favor of removing restrictions in the special circumstances case. We filed in favor of deregulating TOFC/COFC. We are at the point now in addressing the literal question of ownership or purchase of one company and one mode by a company and another mode, we are at the point of addressing the kind of issues that Mr. Creedy has raised with you today.

PROTECTION OF ANTITRUST LAWS

I will admit to you freely that they are complex issues. When one begins to get into the antitrust laws, protection afforded by the antitrust laws or Interstate Commerce Act one moves beyond my realm of expertise.

Senator ANDREWS. But you feel, Mr. Secretary, representing the Department of Transportation, that there is adequate protection being demonstrated under the Staggers Act to the captive shipper?

Mr. SWINBURN. I would agree with the way Mr. Dempsey put it, sir. There is adequate protection available in the Staggers Act for the captive shipper. Without being able to look at individual circumstances where it is alleged the shipper does not have that kind of protection, it is difficult to respond to the plight of your grain shipper in North Dakota.

We would be happy to look at any individual circumstances you might wish to bring to our attention and see if we can find out if the protection is adequate, if it is not being exercised, where it could be, et cetera.

It is our belief that protections written into the statute are adequate if promptly applied.

HELP FOR THE SMALL SHIPPER

Senator ANDREWS. It would be helpful if the Department of Transportation would cooperate in the application of those standards to the small concern, and that is generally what it is, the small concern at the end of the line that is a captive shipper, that simply does not have the legal resources to go and initiate an antitrust suit.

Mr. SWINBURN. We certainly would look at the problem in a general fashion, if you will, sir.

Secretary Dole has, since her hearing before you and pursuant to the conversations she has had with you and other members, asked us to make sure she is fully informed on the situation facing the small shipper, the small community, boat freight and passenger, as a result of the major pieces of regulatory legislation that have been passed in the last few years.

We are amassing information for her. If you have information you would like us to look at in North Dakota, we would be glad to include that in what we are giving her presently to give her alternatives in dealing with any problems that might arise.

I think it is safe to say she has a personal interest in this question and I don't think she will appear before the Congress in any subsequent hearings on questions dealing with deregulation, intermodal ownership, whatever, without having taken a very close look at it and having some pretty good information for you.

Senator ANDREWS. She is a lot closer to wheatgrowers in this Nation than any Secretary of Transportation we have had before.

Mr. SWINBURN. I understand that.

Senator ANDREWS. Not that North Dakota does not produce more wheat than Kansas, but certainly Kansas has some of the same problems we have.

SOLVING ANTITRUST ISSUE

Mr. SWINBURN. Just to pick up very briefly on the antitrust issue following the questions Mr. Creedy has raised, they are in areas that are beyond my expertise. We have, therefore, sat down with the Department of Justice as recently as yesterday to begin to explore these questions.

Mr. Creedy and the Justice Department and I have agreed to get together in a three-way exploration of those questions, perhaps tomorrow, perhaps next week.

It is not until we fully understand some of those questions, the application of the antitrust laws, et cetera, that we are going to be comfortable taking a position on not just the intermodal ownership issue, but on questions of rail-water interfaces in general.

Obviously we extend the same opportunities to the railroad industry to come in and talk about these things. We have been including in the conversations both the Federal Railroad Administration and Maritime Administration, who in some sense represent those industries with the Department of Transportation.

Senator ANDREWS. Mr. Secretary, we would appreciate your keeping the committee advised of the progress of those talks and what you are ending up with so that before we mark up the bill we will have the benefit of that information.

Mr. SWINBURN. We will be glad to.

Senator ANDREWS. Thank you very much.

Our next witness is Mr. Fitzpatrick who is the Director of the Office of Transportation, U.S. Department of Agriculture.

It is good to have you here, Mr. Fitzpatrick. Might I say that not just because I come from an agricultural State, but the biggest dollar earner overseas for our Nation are agricultural exports. They are also uniquely the bulk commodities that are often emanating from captive points and have to travel great distances to get to the coast.

Also a factor in this competitiveness overseas is what it costs to get them to the seaport to be loaded in ships and also what it costs to ship them across the ocean.

So, in my seat on the Senate Budget Committee we are reminded that the out year deficits that are so devastating our economy, employment, interest rates, and all the rest are partially caused by the imbalance of payments that we have in our foreign trade.

Mr. Fitzpatrick recognizes the challenge that is in this field. The Secretary of Agriculture has told us on many occasions he wants us to do everything we can to get the lowest net cost of transportation for our grain shipments for export because it is so important to broaden our markets.

So, we are glad to have you here this morning, Mr. Fitzpatrick, for your statement and also to have your interplay on some of the questions that will come up in a few minutes.

DEPARTMENT OF AGRICULTURE

STATEMENT OF MARTIN FITZPATRICK, DIRECTOR, OFFICE OF TRANSPORTATION

TRANSPORTATION OF FOOD AND AGRICULTURAL COMMODITIES

Mr. FITZPATRICK. Thank you, Mr. Chairman, for your support and kind words.

It is a pleasure to be here this morning to discuss intermodalism and its impact on agriculture before your committee.

The Office of Transportation conducts an applied research toward the goal of improving the efficiency in the transportation of food and agricultural commodities, reducing nontariff barriers, and developing transportation policy relating to agriculture or rural development.

Internationally intermodalism is almost synonymous with containerization. While bulk shipment of grain overshadows containerized shipment in total export volume and value, some grains like edible soybeans move in containers.

Among farm commodities, those with high unit volumes requiring special handling such as fresh fruits and vegetables, oranges, apples, frozen fruits and vegetables, and frozen meat and poultry, move in intermodal containers.

We are just now in USDA implementing Public Law 97–325, the International Carriage of Perishable Foodstuffs Act. This law authorizes the Secretary of Agriculture to implement the international agreement on transport of perishable foodstuffs and on the equipment to be used for such carriage.

In the future, failure to comply with the agreement would limit access or raise cost to U.S. exporters in certain European markets.

Domestically the term intermodalism, as you well know, is understood to mean trailer/container on flatcar, TOFC or COFC. TOFC, trailer on flatcars, has continued an absolute as well as relative growth during the recent period of declining rail traffic.

While all truck movements still dominate the transportation of fruits and vegetables, TOFC has grown from less than 1 percent to nearly 5 percent of the total nationally in the last 5 years, but is much higher in some areas. Of course, California is one.

A variety of factors have contributed to the growth of TOFC and those are important to note. Those include increased fuel cost, loss of refrigerated railcars due to obsolescence, retirement, and deregulation.

With severe reduction in refrigerated railcar capacity and near total dependence upon trucks, many shippers become concerned over their lack of transportation alternatives especially in the wake of the independent truckers' strike of 1979.

More recently during the independent trucker' strike in early February of this year trailer-on-flatcar programs did appear to provide a viable option for many shippers in many regions of the country. During the first week of the strike USDA reported a decline in truck shipments of about 15 percent, but an increase in rail, mostly TOFC, which offset fully one-third of the truck decline.

Charts and statistics on this are available from USDA and we will be glad to submit those for the record.

We have contributed to several studies regarding intermodalism and TOFC at the request and in cooperation with Congress, industry, shippers, and farmers. I would like to just note that these studies are listed in my formal statement.

COMMON OWNERSHIP OF DIFFERENT MODES

Another aspect of intermodalism is common ownership of different modes and this has been eloquently covered this morning by other members of the panel.

Recently the ICC determined the railroads could be granted motor carrier operating authority on the same basis as any other applicant. This was, of course, a controversial decision. The Department of Agriculture watched closely and studied this issue very closely, but chose not to participate in the proceeding.

Formally there has been no attempt in USDA to assess the probable impact of this decision. We have looked at it, Mr. Chairman, and we are reviewing it. The ramifications, however, are potentially very complex and we believe there is little reason to anticipate an adverse impact on agriculture of this specific situation.

With respect to grain, fresh fruits and vegetables, livestock, and most agricultural commodities which have always been exempt from interstate regulation when moving by truck, there is little reason to anticipate any impact or little impact.

However, there is an area in which some future research may be warranted and, of course, as always we will very carefully monitor it and if the situation changes, which it very well could, we will report to you and to the appropriate committees of Congress.

Let me just close with a brief mention of a particularly interesting project which is in the exploratory stage and I know you want to hear about many of the things that the Government is doing in research and what can be done.

SHOCK AND VIBRATION PROJECT

One project I want to mention concerns shock and vibration testing for TOFC shipments for certain agricultural products. One of the TOFC problems that industry has called to our attention is that some products packed for truck movement suffer excessive damage in rail movement, or vice versa, because the nature of the shock and vibration of the two modes are different.

The purpose of the project would be to find optimal packing methods to minimize costs and losses for combined shipments. The Association of American Railroads and the Federal Railroad Administration have expressed interest and support in this area.

PREPARED STATEMENT

Mr. Chairman, this concludes my remarks. I will be glad to answer any questions.

[The statement follows:]

STATEMENT OF MARTIN F. FITZPATRICK, JR.

It's a pleasure to be here this morning to discuss briefly just a few aspects of intermodalism which are of interest to USDA's Office of Transportation (OT). OT conducts applied research on shipping facilities and containers, technical assistance for both domestic shippers and exporters, and economic analyses, all toward the goals of improving efficiency in the transportation of food and agricultural commodities, reducing non-tariff barriers, or developing transportation policies relating to agriculture or rural development.

Internationally, intermodalism is almost synonymous with containerization. Growth in containerized ocean shipping over the past thirty years has been substantial. While bulk shipment of grain far overshadows containerized shipment in total export volume and value, some grains, i.e. edible soybeans or identity-preserved grains, move in containers. Among agricultural commodities, those with high unit values or requiring special handling, such as fresh fruits and vegetables, ornamentals, and fresh or frozen meat and poultry, commonly move in intermodal containers.

OT is just now implementing P.L. 97-325, the International Carriage of Perishable Foodstuffs Act. This law, passsed last October, authorizes the Secretary of Agriculture to implement the international Agreement on the Transport of Perishable Foodstuffs and on the Equipment to be Used for Such Carriage. The agreement sets forth certain testing, inspection, and certification requirements for refrigerated containers and other vehicles used to transport perishables internationally within Europe. Failure to comply with the agreement would limit access or raise costs to U.S. exporters in certain European markets.

Domestically, the term intermodalism is popularly understood to mean trailer/container-on-flat-car, or TOFC/COFC. TOFC is the fastest growing segment of the rail market. In the decade from 1973 through 1982 TOFC grew from six percent to 10 percent

of total rail traffic. TOFC has continued an absolute as well as a relative growth during the recent period of declining rail traffic. While all-truck movement still dominates the transportation of fresh fruits and vegetables, TOFC has grown from less than one percent to nearly five percent of the total nationally in the last five years, but is much higher in some areas, notably California.

A variety of factors have contributed to the growth of TOFC: increased fuel costs, loss of refrigerated railcars due to obsolescence and retirement, and deregulation. (Fruit and vegetable traffic by rail was deregulated in 1979; all TOFC traffic was deregulated in 1981.) With severe reduction in refrigerated railcar capacity and near total dependence upon truck, many produce shippers became concerned over their lack of transportation alternatives, especially in the wake of the independent truckers' strike in 1979. More recently, during the independent truckers' strike in early February of this year, TOFC did appear to provide a viable option for some shippers. During the first week of the strike, the Weekly Fruit and Vegetable Shipments data prepared by USDA's Agricultural Marketing Service showed a decline in truck shipments of 15 percent but an increase in rail (primarily TOFC) which offset fully one third of the truck decline.

OT has completed or contributed to several studies at the request of and in cooperation with industry which either concentrated on or at least considered TOFC/COFC alternatives, beginning in 1979 with Piggybacking Fresh Vege ables: California to the Midwest and Northeast. More recent studies include Shipping Maine Potatoes to Eastern Markets (1981), Shipping Alternatives for Moving Florida Produce to Eastern and Midwesten Markets (1981), and The Transport of Baled Cotton: Review and Outlook (1982).

Another aspect of intermodalism is common ownership of different modes. Until recently, common ownership of different

transport modes regulated by the Interstate Commerce Commission was, in general, prohibited. Specifically concerning ownership of motor carriers by railroads, the ICC substantially reversed that doctrine in a January 1983 decision in Ex Parte No. MC-156, Applications for Motor Carrier Operating Authority by Railroads and Rail Affiliates. The ICC determined that railroads could be granted motor carrier operating authority on the same basis as any other applicant. This was a controversial decision and no doubt will be given a judicial test. The Department of Transportation had favored the position the ICC adopted; USDA did not participate in the proceeding.

There has been no attempt in USDA to assess the probable impact of this decision. The ramifications are potentially complex, though there is scant theoretical or empirical reason to anticipate an adverse impact upon agriculture. With respect to grain, fresh fruits and vegetables, livestock and most other agricultural commodities which have always been exempt from interstate regulation when moving by truck, there is little reason to anticipate any impact. However, this is an area in which some future research may be warranted; and OT will monitor developments.

Let me close with a brief mention of an interesting research project which is in an exploratory stage. It concerns shock and vibration testing for TOFC shipments of certain agricultural commodities. One of the TOFC problems that industry has called to our attention is that some products packed for truck movement suffer excessive damage in rail movement, or vice versa, because the nature of the shock and vibration for the two modes is different. The purpose of the project would be to find optimal packing methods to minimize costs and losses for combined modal shipment. The Association of American Railroads and the Federal Railroad Administration have expressed interest in this area.

General Questioning

IMPACT OF THE STAGGERS ACT

Senator ANDREWS. Thank you very much, Mr. Director.

Let me cover a couple of things about the new super agency and impact of the Staggers Act first and then get into some detailed questions.

Mr. Kiley, the apparent intent of the Staggers Act was to promote competition by substituting the marketplace for Federal regulation.

Now, in your opinion, has there been an increase in competition since the Staggers Act took effect?

Mr. KILEY. You mean between the motor carrier industry and railroads?

Senator ANDREWS. Generally in transportation.

Mr. KILEY. The railroads say there has been more competition which has benefited them. We have not seen any great effect as far as the trucking industry is concerned.

I can't answer that question from the standpoint of intermodal transportation. When we free up rates, rates can fall to whatever level they want to charge, the main thing is services, and service is very important.

It is very difficult to duplicate highway service, no matter what the rate might be. We have not seen any great impact at this stage of the game.

Senator ANDREWS. Mr. Creedy, have you seen any increase in competition since the Staggers Act took effect?

Mr. CREEDY. The evidence from our shipper friends in the coal industry and other areas seems to indicate a lessening of competition.

Senator ANDREWS. Mr. Dempsey, what is your feeling?

Mr. DEMPSEY. I try to agree with John when I can, but I just can't do it at this time. I think the record is perfectly clear that there has been an enormous increase in competition. Take piggyback alone, and I think perhaps, I know, that a lot of Ed's clients would agree with me, the competition is really almost brutal in the area of fresh fruits and vegetables.

Of course, deregulation came with the 4R Act, but it is essentially the same kind of thing. There again the competition has been intense. The proliferation of contracts gives one a pretty good idea about what is going on out there in the transportation market.

Senator ANDREWS. Let me follow that up with another question which has to do with which agencies or where we are going to be funding these various functions for transportation.

CONSOLIDATION OF ALL TRANSPORTATION OVERSIGHT AGENCIES

We understand, as was mentioned a minute ago by Secretary Swinburn, there is a proposal to consolidate all of these transportation oversight agencies in a new body, a combined agency I think is the movement of the bill you are now studying, but you have not yet come up with a departmental, shall we say, view on this legislation as I understand it.

But I would like to ask Mr. Dempsey, do you feel that future transportation oversight would be better vested in a combined independent agency or within the executive branch?

Mr. DEMPSEY. I am not as far along even as Mr. Swinburn in the sense of analyzing Senator Packwood's bill. I have not even read the bill. I will be called upon to testify toward the end of the month as well and by that time I hope to understand the bill in all its detail.

At this time I think I would simply raise one caveat and that is this: However matters go, we would hope that the Interstate Commerce Commission, if there is to be a super agency, would be given adequate transition time to complete implementation of the Staggers Act. We think it would be disruptive to move that terribly important piece of legislation and its interpretation and implementation out of that Commission.

Senator ANDREWS. What would that super agency have to do if we were totally deregulated in the field of transportation?

Mr. DEMPSEY. It would serve the function you indicated before, take care——

Senator ANDREWS. Of assorted political hacks?

Mr. DEMPSEY. Yes.

Senator ANDREWS. Mr. Kiley, what is your feeling whether this future transportation oversight should be vested in an independent agency or in the executive branch?

Mr. KILEY. We are looking at that now to see what our position might be. You put your finger on our concern. We are not concerned at this stage of the game with what the agency is. What is there going to be left to administer? There will be nothing left.

We have come to the Congress with oversight hearings on the Motor Carrier Act of 1980. You passed the act of 1980 calling for deregulation of the industry.

The ICC is acting as if there is nothing left. DOT is talking in terms of total deregulation.

Our main concern is what law is going to be left on the books. If there is not much left, it doesn't make a big difference who administers it.

Senator ANDREWS. If there is not much left, it would probably be better off left in the Department of Transportation where you already have the infrastructure in existence?

Mr. KILEY. What would they do as far as we are concerned? We are looking at that picture right now. You have safety. That is there now in the Bureau of Motor Carriers and the Federal Highway Administration and DOT.

The big question is, where are we going from the standpoint of what role is left to administer? I think that is more important than who is going to do it.

Senator ANDREWS. Certainly the cost would be less and interference would be minimal if an agency already in existence were doing it.

Mr. KILEY. You would like to think what you have left on the books is given to somebody who believes something should be there. At the same time it is a lot like ICC does not need pallbearers or caretakers.

Senator ANDREWS. We are supposed to be sunsetting the CAB, but you ought to hear the screams when we are cutting their budget a bit.

TAKING HARD LOOK AT DEREGULATION

Mr. KILEY. I would like to pick up a couple of comments Mr. Creedy made.

We are taking a hard look at deregulation. We wonder whether or not all these things are coming about. I would offer this observation.

I am wondering if in these areas we are not about to sacrifice proven transportation systems on the all-tariff ideology, proving the marketplace is better than everything. If you were to read the transportation policy in the Staggers Act and Motor Carrier Act as it pertains to the motor carrier industry and the railroad industry, you will find what Congress and what the Government is supposed to do, the intent of the Congress.

I suggest to you these goals cannot be achieved in the marketplace.

Mr. DEMPSEY. Mr. Chairman, I wonder if I might add something so that our position is clear. We are in favor of deregulation for the railroad industry, but we take no position with respect to whether that is good or bad in terms of the motor carrier industry or barge industry.

Their problems are quite different from ours, essentially an entry problem. You can enter the motor carrier business pretty easily. I can see all the competition that is going on out there. It may very well be undesirable.

I don't take a position on it. No one wants to enter the railroad industry, so we don't have that problem.

Senator ANDREWS. As I understood it, didn't you earlier express an interest in intermodality?

Mr. DEMPSEY. Yes; I was talking about economic regulation apart from the question of intermodality.

CREATION OF INDEPENDENT AGENCY

Senator ANDREWS. Mr. Creedy, where would you think that this new regulation ought to lie? In the Department of Transportation or in some super agency?

Mr. CREEDY. I think the experience really since 1887 has been that an independent agency makes a lot of sense. It is something that, where you have a complaint from a grain elevator in North Dakota or somewhere in Kansas, people who are complaining like to come to the Congress.

An independent agency reporting to the Congress has always made a lot of sense to me. What you have here is not a question of are you going to lump them all in one independent agency or put them in the Department of Transportation. What you have is a sort of no-man's land opening up here between on the one hand the regulation of monopolies, partial monopolies; on the other hand, the fact that the antitrust laws really don't fit, they don't apply properly.

Either they have to be revised or it seems to me that the objective ought to be, as Bill Dempsey said and I like to agree with Bill

Dempsey when I can—he said that the railroads want to be treated like any other industry.

Well, fine, they say, let's aim toward that as part of the Interstate Commerce Act, let us apply to the Interstate Commerce Act the kind of things that have been successful in promoting competition.

You really come back to the father of the free enterprise system, Adam Smith, who said that narrowing competition is always against the public interest. Wherever you narrow competition, as the shippers are complaining and some railroads are complaining about, other railroads, as Bill has been saying, and water carriers are worried about their access, whether they will be shut out of competition, it seems to me you ought to focus on competition, what is the health of that.

Senator ANDREWS. Mr. Dempsey, Congress originally regulated the transportation industry because of the fear that the financially powerful carriers would drive other carriers out of business. If legal obstacles to multimodal ownership were all removed, how likely is it that that old fear will bear itself out?

Mr. DEMPSEY. I don't think it is likely at all. I can understand that kind of concern in a historical sense when one was considering industries like the motor carrier industry that were in their infancy, but that industry is strong, it is having difficulties as we are, but fundamentally it is a very strong industry.

There is a good deal of concentration. The 20 largest motor carriers in 1981 earned about 20 or 25 percent of the entire rail industry's net revenues. So the idea that the railroads would somehow push everybody out of business is not to be realistic at all.

Indeed, we have no interest in doing that. We could now do much more than we are now doing in the way of performing independent trucking, that is to say not auxiliary or supplemental to rail service in the case of piggyback. We are not doing very much of that.

Senator ANDREWS. How do you feel about that, Mr. Kiley?

Mr. KILEY. You mean the piggyback operations?

Senator ANDREWS. No; mainly the fact that we originally regulated the overall transportation industry because we were afraid the general public felt there were a number of examples of the financially powerful carriers driving other carriers out of business and creating a monopoly.

I asked Mr. Dempsey if legal obstacles to multimodal ownership were removed, how likely is it that this fear would bear itself out?

Mr. KILEY. Mr. Dempsey said there is no fear of it. We feel there is a definite fear of that. Despite what he may say about the relative profitability, I might find out as far as class II motor carriers are concerned, they are going through the worst year in history.

We think the railroad industry does have the financial backing directly or indirectly to in effect stifle competition by getting into other modalities of transportation. We think that is a very real threat that can come about.

There are two barriers, the Interstate Commerce Act is one, old part II codified now in part I. One is a special prohibition in certain cases against acquiring motor carriers, expanding existing authority.

ICC has changed the definition of that, has relaxed it. We are appealing that in the courts. They cite the Staggers Act and Motor Carrier Act of 1980 as a basis for this relaxed definition. We don't think there is a basis for that.

The other prohibition is old part I of the act. Our main concern is not so much financial leverage. We believe the r. 'roads do not have interest in promoting and pursuing motor carrier ransportation. This is where it would stifle productivity.

OPPOSITION TO REMOVING TRUCK WEIGHT LIMITS

The railroads' traditional opposition not only to improved highway programs, but we have fought them in State after State to get relaxation of State weight laws even to the extent of fighting what has been in effect railroad-sponsored opposition to removing truck weight limits.

Missouri is an example. It is overcome now because we have a mandate of 80,000 pounds. They overturned 80,000 pounds based on a railroad campaign.

We have been trying to get twin trailers in Virginia. Virginia is a good example, Norfolk & Southern has been fighting it. We believe they would have no commitment to improving motor carrier transportation. We do believe they still have a financial incentive to get that traffic back to the railroads.

It is very important that if we are talking about improved intermodalism, improved piggybacking, as Bill Dempsey has said, and was stated by Mr. Swinburn here, we are getting improvement today. Piggybacking has come a long way. It was done without common ownership.

I don't think we need common owernship to improve it. I think the barriers existing in present law should stay there.

Mr. DEMPSEY. Perhaps the best way to get the railroads to stop doing the terrible things to the trucking industry would be to make them part of the trucking industry.

Senator ANDREWS. Who has the money to acquire whom? I think I probably know the answer to that.

Along that line, Mr. Dempsey, let me ask this, and we asked this question of the ICC when they appeared before us not too long ago. When they deregulated the price of carrying grain and coal and a number of other commodities, I think everything in the boxcar, the question logically came with the increase in price and what it can do to the captive shippers and others, what happens to this money?

Are we going to expect that this money is then reinvested in transportation facilities or, given today's tendency of the railroads, will that money be invested outside of transportation?

What assurance can we give since we are freeing up the railroad industry and the transportation industry and if these rates are allowed to rise to wherever the railroads put them, what assurance does the shipper have that that rate that he is paying will then be reinvested in better transportation for him?

Mr. DEMPSEY. Thank you, Mr. Chairman. That is a good fair question and I can understand your interest in it.

Let me just in a preliminary way, however, comment on what you refer to as deregulation and its effects.

Incidentally, the boxcar ruling is not yet final and we are not sure exactly what form it will take, but in that instance as well as in all other instances under the Staggers Act if the act is properly applied, and we think it has been, the rates simply can't go as high as the carrier wants to put them because there will be no deregulation except in circumstances where competition in effect controls the rate level.

Where it doesn't, then the Commission retains its maximum rate authority. Apart from that, in my judgment, the best way that the Congress can insure that the railroad income and assets are devoted adequately to the transportation network is to create a climate in which it is reasonable for a private entrepreneur to do that.

I think I can rely upon and cite to you empirical evidence in support of that proposition. The railroad industry up until the 4R Act was passed, as you know, was in dreadful condition. We had catastrophe in the Penn Central and truncation of the Milwaukee railroad and demise of the Rock Island. It looked as if the picture was so bleak there would be no recovery at all.

Then the Congress, beginning with the 4R Act made it perfectly clear that it was dedicated to doing something about that situation and making it possible for the railroads to earn an adequate rate of return. We are for that.

We earned 2.5 percent on our net investment last year as compared to 16.5 percent adequate rate of return specified by the Commission. At least we are not awash in the sea of red ink.

We see beyond the recession the possibility of improving our situation over what it has historically been. What has that meant in terms of capital investment by the railroads?

What it has meant is 5 years of recordbreaking investments in track, in roadbed, in equipment and the result is that deferred maintenance on the country's main lines has been wiped out.

You know what the situation was 5 or 6 years ago. It was perfectly dreadful so far as condition of much of the track and roadbed in the United States is concerned, not on all railroads, but on a large number. That situation has been completely reversed.

That is the way, it seems to me, to insure the progress which has been made in the past 4 or 5 years.

REINVESTING RAIL MONEY

Senator ANDREWS. Let me quantify my question then, Mr. Dempsey.

What percent of rail income is being reinvested in railway or other transportation?

Mr. DEMPSEY. I will see what I can do about getting specific figures for you, Mr. Chairman.

Senator ANDREWS. Do you have a roundhouse guess?

Mr. DEMPSEY. No; I don't.

I can say this, though. More than is economically justified in terms of any kind of historical performance, earnings performance by the railroads.

Senator ANDREWS. Given the rate of return on railroads obviously there are places you can get a better rate of return.

Given the rate of return in agriculture, as I am sure Mr. Fitzpatrick can put out, the money I earn on the farm should not be invested back on the farm because I think the USDA and Department of Commerce say I am getting 1.5 percent return on my investment.

Railways are a little bit better than that, but we do reinvest in the farm just as the consumers and shippers would hope you would reinvest in railroads because we need viable railroads and we don't want to start spinning that money out.

If it's not the railroads reinvesting in the railroads, then who would?

Mr. DEMPSEY. That is the problem. We can't raise the capital. We could not have raised equity capital, given the past state of the roads. Notwithstanding the fact that it doesn't seem to make economically good sense to do what they have been doing, we have been doing it anyway.

I will give you all those figures because I think they are startling in terms of commitment by the railroad industry in terms of future of the railroads.

[The information follows:]

REVENUES EARNINGS AND INVESTMENT

[Dollar amounts in millions]

Year	Capital expenditures	Ordinary income	Ratio capital expenditures to ordinary income
1972	$1,215.6	$318.6	3.8
1973	1,342.1	359.3	3.7
1974	1,565.4	730.2	2.1
1975	1,787.7	144.4	12.4
1976	1,724.7	355.0	4.9
1977	2,290.4	325.6	7.0
1978	2,738.2	306.8	8.9
1979	3,324.2	938.3	3.5
1980	3,621.3	1,191.5	3.0
1981	2,854.6	2,041.3	1.4
1982[1]	1,975.1	1,180.6	1.7

[1] Preliminary.
Sources: Annual Reports (R-1) and Quarterly Reports (CBS) of Class I Railroads.

CONCERN OVER RAILROADS GETTING OUT OF THE BUSINESS

Mr. SWINBURN. Mr. Chairman, I want to emphasize some of the points that Mr. Dempsey has just been making and somewhat anecdotally.

When I first began working in the Department 10 years ago one of the first tasks I was assigned was to look at the question of diversification in transportation companies. I spent quite a bit of time talking to railroad presidents.

You will probably recall around a decade ago there was a lot of concern over railroads getting out of the business and getting into root beer and panty hose and other profitable investments. Conversations with railroad executives found them excited in that regard. They were beginning to look at railroading as potential losers for quite a while.

That is not universally true of all the railroad presidents, but it certainly was true of those in the Northeast and upper Midwest in this country.

There is a totally different climate today. When you talk to railroad presidents today, even in those parts of the country, they are excited again about the railroads.

Mr. Dempsey is correct about the amount that has been reinvested in the railroads. You don't find sweeping trends in getting out of the railroads.

I think that is based strictly on one set of circumstances. That is the recognition by Congress that railroading has become a nonprofitable enterprise, that the board of directors with the responsibility they hold toward their stockholders can no longer afford to put money in the business.

That climate has changed with the several acts passed, most recently the Staggers Act. I think it will change in the future. I think it is a positive development that we should not forget when we look at individual problems we are facing in the Staggers Act.

Senator ANDREWS. In addition to the problems we are facing, a moment ago Mr. Kiley talked about the problems they have had in getting increased truck lengths and widths and weights and the fight they have gotten from their competitive forms of transportation.

INCREASING TRUCK WIDTH

A year ago or last year in the Congress this subcommittee, taking a look at the need for wider trucks and more efficient long trucks, decided to do what it could on truck width. Because we didn't have a gas tax bill moving along as a vehicle, in fact we didn't see any vehicle at all, we saw postponement after postponement after postponement.

A lot of lip service, but nothing was done. It was pointed out to us that the consumers of this country would benefit by a total of some $4 billion by simply increasing the width to 102 inches, which buses were already at.

We did that and, of course, we put some teeth in it because we are used to that kind of action having teeth. We said if you don't allow 102-inch trucks, you are not going to get any highway funds to build your highways. That is quite an incentive for the States to allow 102 inches.

We passed it and it became law. Then the other day, under a unanimous consent deal and the justification given, we tied the dates together so that the dates of length and width were fine. The bill was shunted through the Senate quickly and over to the House by unanimous consent and was passed.

It has now effectively removed the forbidding of highway funds for those States that refuse to allow 102-inch trucks. I assume the Department of Transportation feels confident in the language that was put in, the language of injunctive relief.

Now, Mr. Swinburn, when you look at that bill, and I assume you looked at that bill before it whistled through, do you feel confident that

injunctive relief will be a competent way to give you the type of, shall we say, backup to enforce these widths?

Mr. SWINBURN. We have looked at the bill closely since it whistled through.

Senator ANDREWS. You looked at it after the fact?

Mr. SWINBURN. Yes.

Senator ANDREWS. Then it was constructed outside of the Department of Transportation?

Mr. SWINBURN. The legislation that we sent up in December that dealt with the other pieces of the puzzle had as its section for noncompliance the withholding of funding. I guess it is clear on the record that our preferred means of enforcing those kind of provisions would be withholding of funds as your legislation did.

Senator ANDREWS. In other words, you wouldn't have voiced the change of that enforcement technique if you had been asked?

Mr. SWINBURN. As of last December we would not. We are, however, faced with a situation where one of the other features of the size and weight puzzle had as an enforcement tool injunctive relief. That is going into effect on April 6.

The question then becomes one of uniformity versus the once preferred sanction alternative, if you will. I think it is fair to say that in this instance we do see benefits in having the same date, that the two provisions should be relevant, the trailer would be suffering a lot of serious problems because they are not on the same date. We do see some benefits in having sanction uniformity.

Additionally, if you are going to move the dates up, as it has been done, to April, it is difficult to rely on a sanction which depends on the withholding of funds, apportionment of funds next October, since the funds have already been apportioned for this fiscal year.

Senator ANDREWS. That is not to say we can't withhold funds until October 1?

Mr. SWINBURN. That is correct. The upshot of that is that even though the sanction itself is not the one we would choose in the first instance, we do see the advantages in the provision.

NEED FOR FILING INJUNCTIONS

Senator ANDREWS. Will injunctions now have to be filed in each noncomplying State?

Let us say that a State decides they are not going to allow wider trucks. Does the trucking company have to file an injunction in the State of Missouri in order to operate there or do you file it for them? How do they get wider trucks now?

Mr. SWINBURN. I realized after you asked the question I did not answer the first point of your question, do we have confidence in the injunctive relief working.

The answer is we don't know. It is not a mechanism that in completely parallel situations we have had an opportunity to use before.

It appears to us that it should work. It has become the law of the land that those States are preempted. We, the Department, are prepared

to recommend the use of injunctive relief, to work with the Justice Department to use it, if necessary.

One would hope it is not going to be necessary.

Senator ANDREWS. In other words, the Department of Transportation, Mr. Swinburn, is in effect saying now that although the truckers of this country are going to be paying that additional tax that you are not really sure after this dark of night bill moved through, whether you can give them assurance that they can indeed move these wider trucks that they thought they were going to be able to move, given the higher tax they are paying.

Mr. SWINBURN. It strikes me, Mr. Chairman, and I am not an attorney and I have not had a full dialog with the General Counsel, it strikes me if it does become the law of the land, as I read the statute, it strikes me at some point we will be able to make it work through injunctive relief.

We are not too sure whether there might be some period of uncertainty. We will be talking to the Justice Department in the event there are States that begin to stop trucks which should be considered to be in compliance with the law.

Senator ANDREWS. Now that the law has been changed you say there may be some period of uncertainty.

Is that 1 month, 2 months, 1 year, 2 years? Again, I'll go back to the question.

Do injunctions have to be filed by truckers now that the law has been changed in a midnight maneuver? Does the injunction have to be filed by individual trucking companies or will the Department of Transportation file that injunctive relief if a trucker wants to move across Missouri?

Mr. SWINBURN. It might be either situation. I can't give you a definite answer until the event happens.

Truckers may file themselves. We may file for them in conjunction with the Justice Department. Until April 6 comes and we know what the reactions of the States will be and how widespread negative reactions might be, it is impossible to predict what will happen.

Senator ANDREWS. If you get a negative reaction from Missouri or Illinois, then you are not sure that you can assure the trucker paying the higher tax that he can indeed move the truck through that State and he could have if we had kept the sanction in for the prohibition of Federal highway funds?

NEW TAX EFFECTIVE APRIL 6, 1983

Mr. SWINBURN. I can give a certainty that we will find a way through it. I can't give you a certainty that on April 6 everything will move in a 100-percent efficient fashion.

Senator ANDREWS. Mr. Kiley, how do you feel about that? Do you feel you can tell your members they can operate freely?

Mr. KILEY. That is the quandry we are in. The way we read the law, come April 6 it is legal in every State under the Federal Highway Act, Federal Transportation Assistance Act, to move with the longer vehicle, also twin trailer and other requirements and now that the Congress has

very wisely changed that effective date for the width which would not be effective until October 1983, moved it up to the same date, on that date we believe vehicles of those dimensions are legal in every State because they have preempted State law.

What can we do come April 6? Now we are fearful because the Department of Transportation says we will give every State time to change its law. If we have to wait for every State to change its law, we don't know when we will be operating these vehicles because one State doing it is not enough.

No motor carrier will invest in new equipment if he can't go through every State in which he operates. The trailer manufacturer is waiting to produce those new vehicles also. We would like to be certain right now what we can do come April 6.

We hope it will not come down to motor carriers putting on highways the vehicles which they believe are legal and then having to contest in State after State because the State has not changed its law. That will be a dreadful way to implement the intent of Congress.

Senator ANDREWS. We didn't feel uncomfortable in the subcommittee about changing dates. Obviously that became evident after the gas tax bill caught up with our bill.

The thing we are concerned about is why the change in enforcement for bidding the use of highway funds through the traditional appropriation type enforcement and it has been one that has been in the law for 25 years.

I assume, representing the truckers, you would have felt more comfortable with that type of enforcement mechanism than with injunctive relief.

Mr. KILEY. We have not evaluated one as opposed to the other in the case of width. The original bill said enforcement will be denied. Then we understood the next enforcement date would have been October 1983, but the original width bill did not say under no circumstances could funds be denied until October 1983.

Therefore, we were stuck until October 1983. To move it up to April, if you said with the apportionment formula, there were no funds to deny the State. So, the State, come April, other than denial of funds we are not going to permit the next apportionment, you don't get money.

So, now you are back to October. The only way to get the law effective April 6 would be through the sanction approach.

Senator ANDREWS. Since Mr. Swinburn is not an attorney and you are not an attorney and we have Mr. Dempsey who is an attorney, in your feeling do the wider and longer trucks now have free access across the country, given this injunctive relief substitution for the prohibition of funds?

Mr. DEMPSEY. I did not even know there was a problem. [Laughter.]

Mr. SWINBURN. First, let me make it clear we agree with Mr. Kiley on April 6 it is the law of the land that the trucks will be allowed to operate. There is no uncertainty about that aspect.

What is uncertain is what the States will do. I don't want to sit here and overplay that uncertainty. There is good reason to believe the

States can read the law, they understand the law and they will do what is right.

STATUTE AFFORDS INJUNCTIVE RELIEF

The fact that they have not been able to change their laws at this point should not be taken as a measure of what they will do on April 6. The statute has two features. It affords injunctive relief if they have not changed their laws.

It also affords injunctive relief if they try to enforce laws which contradict Federal laws.

We put out a statement saying we will give them until October 1 before we will consider injunctive relief against laws that have not been changed, but we are willing to consider injunctive relief immediately after April 6 if they attempt to enforce those laws that have not been changed. That is, try to stop trucks from moving on their highways.

Senator ANDREWS. In other words, you are not prepared to apply injunctive relief until October 1 which is the date that the other enforcement provision would have gone into effect. But, if they do something to prohibit the movement of these wider and longer trucks, you are prepared as of April 6 to put the full force of the Department of Transportation behind moving for this injunctive relief?

Mr. SWINBURN. You have stated that a little more strongly than we have stated it, Mr. Chairman.

We said we are willing to use injunctive relief as is necessary. Again until April 6 comes, and we have talked to the Justice Department, I can't be definitive on this until we know the size of the problem, if this is a problem. We don't know yet if there is a problem.

Senator ANDREWS. If you thought you had problems with the truckers' strike earlier this year, wait until we see what happens if the independent truckers move down the highway after paying higher taxes and find out because of some little rules change in the tailend of the congressional week they can't have access to those highways.

They will come in here storming at the gates and we had better darn well find the type of injunctive relief that will allow those trucks to move down the highways. I don't think I am too far afield on that.

Let me ask another question based on what Mr. Mann pointed out. He is looking for the rules that will give him the access to the movement of that completed food product.

If you have these new trucks moving down the interstate highway and you can't get access, you really don't have much.

Will you have as much bargaining power with the recalcitrant States under this injunctive relief provision as you would have had under the prohibition of funds and will the Department of Transportation move if they feel one State is taking undue advantage of the trucking industry?

Will the Department of Transportation move to give injunctive relief to require access in those States where it is not being given freely?

Mr. SWINBURN. We will be putting out next week, Mr. Chairman, by April 6, in fact, a second policy statement which will both designate highways, that system of primary highways, on which the large trucks can operate and will also deal with the question of access definitively.

The questions are being bounced around within the Federal Highway Administration literally today and tomorrow. It will be next Wednesday or Thursday before I can tell you exactly what is going to be put out.

Senator ANDREWS. But the Department of Transportation can be expected to be an aggressive agent in this field?

Mr. SWINBURN. We are mindful of the Congress intent that interstate commerce not be impeded and uniformity be imposed throughout the country and we are going to be doing our best to achieve that goal.

IMPACT OF BRANCH LINE ABANDONMENTS

Senator ANDREWS. Mr. Fitzpatrick, what do you think is the impact of branch line abandonments on the efficient movement of agricultural goods?

Mr. FITZPATRICK. We have seen a mixed bag on that issue. In some cases branch line abandonments have resulted in more efficient transportation, in some cases more inexpensive transportation of grain.

In the region of the Great Plains, branch line abandonments have caused some problems, such as dislocation of grain elevators. Our office has worked very closely with technical assistance and so forth when a particular line can be saved, and in some cases worked with the railroads and shippers and been able to give some assistance to keep that line operating.

Senator ANDREWS. Have you done any studies, given the fact where this abandonment is taking place it is usually the captive shipper way out at the end of the line and if those tons of grain are to be moved by any other means than rail, it is going to be moved by truck on highways.

The highways are not heavy-duty highways. This committee and the Congress and the taxpayers are going to have to pay for a whale of a buildup in heaving up these highways out in that area that simply have never been used for, nor were they designed or built for, the transportation of this kind of bulk commodity.

Do you have information to give the committee whether we might save money by having some means of retaining the branch lines which will be much cheaper than heaving up the highways or would we be better off heaving up the highways?

How do we come down on that when we are looking to saving the taxpayers' dollars?

Mr. FITZPATRICK. In answer to what we are doing right now, we don't have any specific information. We are in the process of conducting an extensive research program including analyzing all the branch line abandonments and keeping a running tally on all the areas that have been abandoned as well as extensive assessment of the status of our Nation's railroads and bridges.

We are combining these two efforts to look at the impacts that you are talking about, specifically what is best for our Nation's farmers.

Senator ANDREWS. Mr. Swinburn, because they come probably more in your area than they do in the Department of Agriculture, these abandonments have put a terrific strain on our highway and bridge infrastructure that is funded out of this committee.

Has DOT measured these impacts on a cost-benefit basis to determine whether this aspect of deregulation has produced more or less efficiency?

Mr. SWINBURN. I don't know the answer to that. I will have to check. To the extent we have it, we will get the data. To the extent we don't, we will take a look at it and attempt to provide it to you.

Senator ANDREWS. In your case, we can get that data from you and hold the record open long enough to get that information.

[CLERK'S NOTE: The information referred to is available for review in the subcommittee files.]

Mr. FITZPATRICK. Our deregulation assessment of July 1982, of which your committee received a copy, we stated that most of the branch line abandonments, major ones, had already taken place prior to Staggers.

There are still some abandonments going on in various regions of the country, but much of the grain system has already been shaken out.

Some of the Great Plains still have some abandonment proceedings and several category II and III branch lines are being considered for abandonment right now. We saw especially in the States of Iowa and Nebraska and some of the midwestern States much of the branch line abandonment has taken place already and adjustments have been made.

Those adjustments in North Dakota and Montana are still being made, as you know.

CONSOLIDATION OF REGULATORY AGENCIES

If I could, Mr. Chairman, I would like to make another statement regarding USDA's feeling on the consolidation of the regulatory agencies.

We have no particular concern on how the regulatory function is served. What we are most concerned about is that issues are addressed in a fashion that is in the spirit of the Staggers Act. We feel there are protections in the Staggers Act given to farmers and shippers.

We would like to see many of those protections pursued by whatever system takes place. Issues that have been of particular concern to us are contract rate disclosures, disclosures of contracts. We have been concerned about reciprocal switching and concerned about the handling of the OT agreement by the railroads.

We would like to see these and many other issues be considered by the Interstate Commerce Commission.

Senator ANDREWS. That raises an interesting point, Mr. Director. As head of the Office of Transportation within the U.S. Department of Agriculture, do you feel somehow constrained not to lend every effort to the enforcement of the protection side of the Staggers Act as far as it deals with agriculture?

Shouldn't some of this initiative come out of your Office of Transportation in USDA?

Mr. FITZPATRICK. Yes, sir, and it has. We have filed on many of the major cases I mentioned before the ICC. We have made recommendations to the Commission and to the Congress about certain things in the Staggers assessment made last July which I mentioned.

We are also continuing through the next few months an assessment of the impact of the Staggers Act on agriculture. As you know, it is a continually changing environment and as the economy recovers we expect some things to change and we are very closely monitoring the effect of deregulation.

We believe the farmers and shippers who don't have the access to high-priced attorneys need someplace to go for their grievance. We try to assist in that manner. We hope that the regulatory function will provide that service.

SUMMARY

Senator ANDREWS. Thank you very much, Mr. Director.

The hour of 12 having been passed, I think we probably ought to sum up by, one, giving each of you a moment to make a final comment if you want to, but let me express the thanks of the subcommittee to you.

We have struck a few sparks. We have gotten a good deal on the record that will give us some invaluable information and some worthwhile insights into how we should move in the funding of these various agencies that come under the purview of our subcommittee.

We deeply appreciate your taking the time to do just that. I think it is significant this is the first time that those of you from the separate disciplines have sat down together before a congressional committee. I think it is long past time.

Sometimes we hide our heads in the sand and hope some of these problems will go away and sometimes attempting to stay within the narrow confines of just what your own committee has a direct responsibility for, but the people back home did not elect us to come down here and pretend that these problems are going to go away.

I think we have established today that there are some significant problems down the line and that we ought to be addressing them and we ought to be addressing them wisely.

The information you have shared with the committee will give us a much better chance to address them wisely. We do appreciate that.

Mr. Mann, do you have any final comments?

Mr. MANN. Just a couple very quickly.

In my experience as a purchaser of transportation and our freight bill of $100 million a year, my experience is very strong, very definite there is more competition since the Staggers Act which is one of the questions you raised, competition between carriers of the same mode and intermodal competition, railroads versus motor carriers as an example.

I don't have any particular feelings about the super agency versus the ICC, but in my opinion where I am coming from I don't think we should have had a Department of Transportation in the first place. I would guess that you have increased the size of numbers in that Department since its inception at least tenfold.

So, I would prefer if a change is made, a single agency that would report to Congress.

Again, I don't speak for captive shippers in the sense of a coal mine or fertilizer, but in our business and lots of businesses private carriage

is still a bailout and a lid on anything if a carrier gets out of line on what he is charging or his practices.

Your comments are interesting about the grain elevator on the end of the line. I don't know if you have one particularly in mind or not.

Senator ANDREWS. I can name a dozen or more and I think you can add to that the coal mine out at the end of the line, the timber producer at the end of the line, any of these people who fall into this category of being captive shippers.

Where do they go now?

Mr. MANN. My point is going to be that a lot of people were asking the railroads to act like businessmen and they gave them some relaxation and they started acting like businessmen and began abandonments of unprofitable lines. I think I understand what you are leading to.

If there is a reason, national or Federal reason, to have that line maintained, even though it is unprofitable to the railroad, to do it for a seasonal movement or whatever, then perhaps it ought to be recognized as a social issue and funded accordingly and not strapped on the back of a railroad that is losing money.

With that, I thank you very much for allowing me to attend the meeting. I think there ought to be more of this type of information gathering by people interested in the various problems.

Senator ANDREWS. Thank you.

Serving in Congress is a learning process and you have contributed to the learning process of this particular committee chairman.

Mr. Creedy.

Mr. CREEDY. I certainly appreciate being here, Mr. Chairman. I do think I certainly did my bit this morning. I would like to comment in closing on this question of do we fear the size of these railroads in terms of their ability to undermine competition.

I think the answer is that size is not a particular problem. Throughout the economy small companies compete with large companies and do so successfully. Sometimes the smaller company will run rings around the larger company.

It is the special monopoly aspect that you find nowhere else in the economy that would produce a lessening and elimination of the independent competition with an intermodal company, it seems to us.

I have detailed how they would do it and how they have done it in the past. It is the leverage, not the size, that is the concern.

Senator Andrews: Thank you very much.

Mr. Kiley.

Mr. KILEY. I also want to thank you, Mr. Chairman, for this opportunity. It has been a good learning experience for me as well.

One brief comment in connection with the truck size and weight and intermodality.

Truck transportation is vital to all forms of transportation. We believe Congress in the Surface Transportation Act providing for the standardization of truck sizes and weights made a giant step forward for efficiency, particularly the width provision.

From the standpont of intermodality the width provision makes it easier and more efficient for a carrier to work with port traffic, we can move with containers and pallets inside the box. This is why we are very anxious to get the issue settled, when can we operate these vehicles.

Thank you very much.

Senator ANDREWS. Mr. Dempsey.

Mr. DEMPSEY. Thank you, Mr. Chairman.

Ed raised the question of weights and sizes. It reminded me I should have said before, so that we are not tarred too badly, we did not oppose the last legislation, the increase in truck weights and sizes. We didn't because it had with it a major increase in heavy truck user charges which seemed to us to be desired.

I don't know whether we are better off or worse off with that bill having been passed.

Senator ANDREWS. The truckers are not quite sure whether they are better off or worse off. So welcome to the club.

Mr. DEMPSEY. Thank you, Mr. Chairman.

I will just express my appreciation to you and to my colleagues.

Senator ANDREWS. Thank you very much, Mr. Dempsey, for coming.

Mr. Swinburn.

Mr. SWINBURN. No further comments. Thank you for having us.

Senator ANDREWS. Mr. Fitzpatrick.

Mr. FITZPATRICK. Thank you, Mr. Chairman. I appreciate the opportunity.

Senator ANDREWS. Gentlemen, we appreciate your participation. We have received written testimony from several other witnesses which we will include in the record at this point.

[The letters follow:]

LETTER FROM JOSEPH FARRELL, PRESIDENT, AMERICAN WATERWAYS OPERATORS, INC.

MARCH 31, 1983.

Hon. MARK ANDREWS,
Chairman, Senate Appropriations Subcommittee on Transportation,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The American Waterways Operators, Inc., the national trade association for the barge and towing industry, endorses fully the position of the Water Transport Association as put forth today in testimony before your subcommittee by Mr. John A. Creedy, president of Water Transport Association.

I would appreciate it if our endorsement is made a part of the record of your hearings.

Best wishes.

Sincerely,

JOSEPH FARRELL.

LETTER FROM JOHN D. CAHILL, WASHINGTON REPRESENTATIVE, MASSPORT

APRIL 6, 1983.

Hon. MARK ANDREWS,
Chairman, Senate Appropriations Subcommittee on Transportation,
U.S. Capitol, Washington, D.C.

DEAR MR. CHAIRMAN: I am forwarding to you copies of our recent testimony before the House Committee on Merchant Marine and Fisheries and a letter to the Federal Maritime Commission regarding the apparent effects of intermodalism within the content of the Shipping Act of 1916. While the Senate Appropriations Subcommittee on Transportation hearing on March 31, 1983 did not deal specifically with the heretofore described issue, we believe the subcommittee may be concerned with the potential diversion of cargo from customary regional ports and the traumatic economic impact of such an outcome.

If we at the Massachusetts Port Authority may be of further assistance regarding this or other issues, please contact me at your convenience.

With kind regards.

Sincerely,

JOHN D. CAHILL, *Washington Representative.*

Enclosure.

STATEMENT OF RINO MORICONI, ASSISTANT PORT DIRECTOR-TRAFFIC, MASSACHUSETTS PORT AUTHORITY

MY NAME IS RINO MORICONI. I REPRESENT THE PORT OF BOSTON IN THE CAPACITY OF ASSISTANT PORT DIRECTOR-TRAFFIC FOR THE MASSACHUSETTS PORT AUTHORITY (MASSPORT). I HAVE BEEN IN THE EMPLOY OF MASSPORT FOR SOME FOURTEEN YEARS, AND HAVE HELD MY CURRENT POSITION SINCE 1978. THE AUTHORITY'S TRAFFIC DIVISION IS PRIMARILY RESPONSIBLE FOR THE CONTINUOUS STUDY AND ANALYSIS OF TRANSPORTATION TARIFFS, RATES, CHARGES AND PRACTICES OF RAIL, WATER AND MOTOR COMMON CARRIERS SERVING THE PORT OF BOSTON TO INSURE THAT BOSTON IS - AND REMAINS IN EVERY WAY COMPETITIVE WITH RIVAL PORTS.

THE MASSACHUSETTS PORT AUTHORITY IS A SELF-SUSTAINING AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS, AND IS CHARGED WITH THE RESPONSIBILITY OF PROMOTING AND PROTECTING THE MARITIME COMMERCE OF THE PORT OF BOSTON. IN CARRYING OUT THESE RESPONSIBILITIES, MASSPORT OWNS, LEASES AND/OR OPERATES SOME EIGHT PUBLIC MARINE TERMINALS ALL LOCATED WITHIN THE CONFINES OF BOSTON HARBOR. THESE WATERFRONT FACILITIES ARE UTILIZED FOR THE RECEIPT AND SHIPMENT OF CONTAINERIZED AND BREAK-BULK GENERAL CARGO MOVING IN FOREIGN AND DOMESTIC OCEANBORNE TRADES. TO DATE, MASSPORT'S TOTAL CAPITAL INVESTMENT IN ITS WATERFRONT PROPERTIES EXCEEDS 85 MILLION. THE CONSTRUCTION OF BOSTON'S THIRD CONTAINER BERTH RECENTLY COMPLETED, REQUIRED THE EXPENDITURE OF AN ADDITIONAL $20 MILLION. AND FINALLY, THE DEVELOPMENT OF SOME 36 ACRES OF LAND FOR MORE CONTAINER SPACE TO MEET THE SEAPORT'S GROWING NEEDS THROUGHOUT THE LATE EIGHTIES AND EARLY NINETIES WILL PREVAIL UPON THE AUTHORITY TO MAKE A FURTHER FINANCIAL COMMITMENT OF $100 TO $120 MILLION OVER THE NEXT FIVE YEARS.

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THE MASSACHUSETTS PORT AUTHORITY IS A LONG TIME MEMBER OF THE NORTH ATLANTIC PORTS ASSOCIATION, INC. (NAPA) AND HAS FOR MANY YEARS, BEEN ACTIVELY REPRESENTED IN THE EXECUTIVE COMMITTEE OF THE NAPA TRAFFIC BOARD. ACCORDINGLY, WE HAVE NO DIFFICULTY IN ADOPTING AS OUR OWN THE TESTIMONY JUST OFFERED TO THE SUBCOMMITTEE BY MR. JOHN M. BRADY, DIRECTOR OF TRAFFIC, THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY AND PRESENT CHAIRMAN OF THE TRAFFIC BOARD NAPA. IN HIS REMARKS, HOWEVER, MR. BRADY CORRECTLY NOTED THAT WHILE THE TRAFFIC BOARD STATEMENT REPRESENTED THE COLLECTIVE OFFICIAL VIEWS OF NAPA MEMBER PORTS, INDEPENDENT COMMENTS HIGHLIGHTING CONCERNS PECULIAR TO SPECIFIC PORT AREAS WOULD MOST LIKELY BE SUBMITTED TO THE SUBCOMMITTEE FOR THE RECORD BY INDIVIDUAL PORT ENTITIES. THE MASSACHUSETTS PORT AUTHORITY WISHES TO TAKE ADVANTAGE OF THAT OPPORTUNITY AND OFFERS THE FOLLOWING SUPPLEMENTAL REMARKS.

FOR THE PAST SEVERAL YEARS, A FASHIONABLE COMMENT TO MAKE IN INDUSTRY CIRCLES HAS BEEN "THE SHIPPING ACT 1916 REQUIRES MAJOR REVISIONS IF IT IS TO COPE WITH THE REALITIES OF TODAY'S TRADE". USUALLY SUCH A STATEMENT OR SIMILAR VARIATIONS THEREOF NOT ONLY FOUND UNIVERSAL APPROVAL, BUT WAS INDEED ACCEPTED AS AN INFALLIBLE FACT.

WHILE PREPARING OUR TESTIMONY ON H.R. 11422, THE INTERNATIONAL SHIPPING ACT OF 1978 (95TH CONGRESS), THE MASSACHUSETTS PORT AUTHORITY MADE A CAREFUL ANALYSIS OF THE SHIPPING ACT, 1916. WE WANTED TO DETERMINE FOR OURSELVES WHETHER THE OLD STATUTE COULD INDEED FUNCTION IN THESE MODERN TIMES OR IF IT SIMPLY ADDRESSED TRADE CONDITIONS THAT WERE QUICKLY VANISHING FROM THE WORLD MARKET.

OUR EXAMINATION DEVELOPED THAT THE 1916 ACT WAS SURPRISINGLY CLOSE TO MOST OF THE DEREGULATORY GOALS OF THE 1980'S. FOR EXAMPLE, THE ACT PROVIDES FOR VERY LITTLE CONTROL OVER THE LEVEL OF RATES IN OUR FOREIGN COMMERCE. IT AUTHORIZES NO RESTRICTIONS ON ENTRY, AND THERE ARE NO FIXED AREAS OF SERVICE FOR CARRIERS. IN FACT, EVEN AFTER DEREGULATION, CONTROLS OVER RAILROADS AND TRUCKS ARE STILL FAR MORE SUBSTANTIAL THAN THOSE OVER OCEAN SHIPPING. OUR ULTIMATE CONCLUSION, HOWEVER, DID ACKNOWLEDGE THAT THE SHIPPING ACT 1916 NEEDED UPDATING IN ORDER TO ADDRESS ANTITRUST PROBLEMS AND INTERMODALISM. THUS, EVEN THOUGH STREAMLINING THE PROCESS OF AGREEMENTS REVIEW AT THE FEDERAL MARITIME COMMISSION HAD LITTLE DIRECT IMPACT ON THE PORT OF BOSTON, AS A RESPONSIBLE MEMBER OF THE INDUSTRY, MASSPORT FELT OBLIGED TO BACK THOSE LEGISLATIVE EFFORTS THAT WOULD, ONCE AND FOR ALL, CLARIFY THE DIVIDING LINES BETWEEN SHIPPING ACT AND ANTITRUST JURISDICTION. AS FAR AS INTERMODALISM IS CONCERNED, WE TOOK THE POSITION THAT PORTS OF BOSTON'S SIZE COULD FOSTER ONLY IN AN ATMOSPHERE IN WHICH THE SHIPPERS CONTROLLED THE ROUTING OF CARGO. WE ANTICIPATED THAT SMALLER PORTS WOULD HAVE LITTLE CHANCE FOR SURVIVAL IN A CARRIER CONTROLLED INTERMODAL ENVIRONMENT.

AS YOU CAN SEE FROM READING OUR ATTACHED LETTER OF FEBRUARY 17, 1983 ADDRESSED TO THE FEDERAL MARITIME COMMISSION, OUR PREDICTION HAS UNFORTUNATELY COME TRUE. THE RECENT PROLIFERATION OF MICROBRIDGE TARIFFS IN THE NORTH ATLANTIC IS HAVING A PROFOUND DETRIMENTAL AFFECT ON THE COMMERCE OF THE PORT OF BOSTON, AND CARGO PREVIOUSLY LIFTED VIA VESSELS ACTUALLY CALLING AT BOSTON IS NOW BEING

DIVERTED TO OTHER U.S. PORTS NOT IN A TRICKLE, BUT BY AVALANCHE.

DESPITE THIS DISCOURAGING TREND, THE BOSTON PORT COMMUNITY DOES NOT WISH TO UNDULY RESTRICT THE EMPLOYMENT OF INTERMODALISM OR TO IMPEDE THE FURTHERANCE OF OTHER TECHNOLOGICAL INDUSTRY ADVANCEMENTS. AT THE SAME TIME, HOWEVER, IT CAN HARDLY AFFORD TO SIT BACK AND BECOME A VICTIM OF SUCH INNOVATIONS WITHOUT A FIGHT. TO INSURE THAT (UNDER THE GUISE OF INTERMODALISM) PORTS LIKE BOSTON ARE NOT ELIMINATED AS VIABLE GATEWAYS FOR LINER CARGO, THE MASSACHUSETTS PORT AUTHORITY URGES THIS SUBCOMMITTEE TO CONSIDER THE FOLLOWING LANGUAGE CHANGES UNDER THE PROHIBITED ACTS SECTION OF H.R. 1878.

SECTION 10(b)(6) PRESENTLY STATES *"engage in any unfair or unjustly discriminatory practice in the matter of--"*

(A) *"rates"*;

IF THIS PART WAS AMENDED TO READ: *"engage in any unfair or unjustly discriminatory practice against any shipper or port in the matter of-- "*

(A) *"rates, charges or through transportation"*

IT WOULD GO A LONG WAY IN INSURING THAT INTERMODAL AUTHORITY IS NOT USED TO UNREASONABLY DIVERT FROM OUR SHORES, CARGO WHICH BOSTON HAS PROPERLY SERVED FOR DECADES.

WE ARE ALSO CONCERNED THAT H.R. 1878 ELIMINATES THE LEGAL STANDARD OF THE SHIPPING ACT 1916 WHICH COMMANDS THE FEDERAL MARITIME COMMISSION TO DISAPPROVE ANY AGREEMENT THAT IT FINDS TO BE UNJUSTLY DISCRIMINATORY OR UNFAIR AS BETWEEN CARRIERS... OR PORTS, ETC. THIS REQUIREMENT HAS BEEN THE MAIN SOURCE OF PROTECTION FOR PORT INTERESTS, AND

WE FEAR THAT REMOVAL OF IT WILL RESULT IN THE COMMISSION EVALUATING AGREEMENTS PRINCIPALLY ON THE BASIS OF THE "OBJECTIVES OF THE PROPONENTS" WHICH WILL MAKE PORTS LESS FAVORED BY OCEAN CARRIERS FAIR GAME FOR CONCERTED DISCRIMINATORY ANTI-COMPETITIVE PRACTICES.

IT IS IMPERATIVE THAT THIS STANDARD BE REINSTATED IN H.R. 1878, PREFERABLY UNDER SECTION 5 (b) WHICH SHOULD BE AMENDED TO READ:

"The Commission shall by order, after notice and hearing disapprove or modify any agreement that it finds to be unjustly discriminatory or unfair as between carriers, shippers or ports or that will otherwise operate in violation of this Act."

WE HOPE THAT THE SUBCOMMITTEE WILL FAVORABLY CONSIDER THE AMENDMENTS WE HAVE OFFERED AS WELL AS THE CONCERNS HIGHLIGHTED BY MR. BRADY IN HIS TESTIMONY.

THANK YOU FOR YOUR ATTENTION.

LETTER FROM RINO MORICONI

February 17, 1983

Mr. James K. Cooper, Managing Director
Federal Maritime Commission
1100 L St., N.W.
Washington, D.C. 20573

Dear Mr. Cooper:

Unlike other U.S. Atlantic ports who, over the years have laid claim to cargo originating from or destined into the far reaches of America's heartland, Boston has conservatively carved out for itself and properly serves a market area comprised generally of five New England States plus certain portions of Northern Connecticut extending in a southwesterly direction to a line where the inland freight rates break to favor the Port of New York over Boston.

The New England export/import cargo market is tightly centered around the greater Boston area. As a matter

of fact, seventy-six (76%) percent of the total liner volume is concentrated within 55 miles of the Boston waterfront. Only two (2%) percent of Boston's liftings are generated in localities beyond 100 miles from the port. Nearly 100% of the seaport's general cargo, break bulk and containerized, is transported overland by truck, as movement by rail is impractical over such short distances.

At its regular meeting of February 2, 1983, the Federal Maritime Commission granted the application of Sea-Land Services, Inc. for continuing special permission to file new and initial joint rail/water or water/rail rates covering services between ports and points in the United States and Europe including the United Kingdom on one day's notice. Absent such special permission, the rates could not become effective until thirty days after the date of filing as required by Section 18 (b) (2) of the Shipping Act, 1916.

The fact that the instant application will apply strictly to joint rail/water, water/rail movements suggests that the cargo likely to be attracted will originate or terminate at points well beyond the coastal states, and, therefore, outside the area over which Boston exercises some degree of influence. Thus, we do not perceive FMC approval of this particular one day notice filing as affecting the Port of Boston one way or the other. Unfortunately, similar special permission will now be sought by dozens of other carriers, and their efforts, if successful, will give rise to much opportunity for mischief. I now explain.

If recent press reports can be believed, some 90 microbridge tariffs comprising of over 11,000 new pages became effective as of early January. Since that time, a number of distressing overtures have rippled to our attention suggesting that (1) ocean carriers who do not normally serve the Port of Boston are using these intermodal filings as a device by which to divert to other ports cargo that heretofore had been lifted via Boston aboard vessels actually calling at the port, (2) ocean common carriers which by means of conference agreements were previously committed to serving Boston in relayed waterborne service out of New York are now (through the use of microbridge tariffs) shunning the feeder barge in favor of substituted overland service by truck, (3) there is considerable evidence that even those carriers who have not yet introduced intermodal tariffs are taking full advantage of the confusion these new filings have created and have stepped up their efforts to divert cargo from the Boston area to more distant ports by the old and familiar method of "Port Equalization" and finally, (4) these disruptions in long established patterns of commerce are coming not in a trickle, but by avalanche jeopardizing hundreds of waterfront jobs, not to mention more than $120 million in capital investments which Massport has committed to the modernization of the Port of Boston.

It is clearly evident from a plain reading of Section 18(b)(2) that as a general rule, Congress intended that new or initial rates be published to become effective not earlier than thirty days from the date of filing. To this rule, Congress saw fit to add a proviso authorizing the Commission,

(good cause shown) to allow such changes to become effective in less than statuatory notice. There is nothing explicit or implicit in 18(b)(2) to even suggest that the Commission is vested with authority so broad as to grant such special permission applications on a "blanket" or "continuing" basis.

As a matter of fact, if one closely examines the statute, what rises to the surface is the unexpressed intention of Congress that each such application be scrutinized to insure (in addition to accuracy and compliance with current regulations) that the rights of all parties be strictly observed. How the Commission can pre-determine that a new or initial rate that may not be filed until six months from now will meet the standards of 46 CFR 536.15(a) is certainly beyond my instant comprehension.

By the so-called "significant action" of February 2nd, the Commission has proclaimed to the industry that it has, of its own volition, inverted how FMC will administer Section 18(b)(2) in the future. In other words, what was once the exception will now be treated as the rule and the rule the exception. Such a move, in our opinion, can only be implemented through legislation and not by FMC generosity; and we urge the Commission to temper its desire to administratively deregulate.

As previously stated, the introduction of intermodal tariffs in the North Atlantic trade routes has unleashed throughout Boston's hinterland steamship lines by the tidal wave seeking to fill their ships in New York by diverting to that port cargo previously moving via Boston. I fear that the February 2nd precedent misguidedly set by the Commission on special permission applications, will excite these marauding carriers even more, and I suspect that in a few weeks they will not only succeed in making Cast's over-the-border activities look angelic, but indeed give a new meaning to the word "lift".

In the interest of carrying out its mandate to do what is best for the Port of Boston, the Massachusetts Port Authority hereby requests that the Federal Maritime Commission give consideration to the following points with respect to intermodal tariffs and Section 18(b)(2) special permission applications.

1. The scope of intermodal tariffs should be restricted to localities beyond the coastal states.

2. Intermodal tariffs should identify the specific points a carrier intends to serve. Tariffs that only name states, counties, provinces, etc. are, in our opinion, permissive in nature, and indefinite in application and, therefore, violative of Shipping Act, Section 18(b), subsections (1) through (3), and should be rejected.

3. It should be compulsory for steamship lines introducing intermodal tariffs to identify the actual port gateway over

which the cargo is really destined to flow. Some carriers are in the habit of naming many ports as a smoke screen by which to neutralize local opposition, when in fact, they have no intention of serving that particular port.

4. Section 18(b)(2) special permission application should be published in the Federal Register so as to be subject to public scrutiny and comment.

5. Section 18(b)(2) special permission applications should be granted only to rail water/water rail movements as the rail segment no longer has any statutory tariff filing notice requirements.

Yours very truly,

MASSACHUSETTS PORT AUTHORITY

R. Moriconi

R. Moriconi
Assistant Port Director -
Traffic

STATEMENT OF JAMES E. SENNER, CHAIRMAN, TRANSPORTATION ADVISORY COMMITTEE OF THE AMERICAN PLYWOOD ASSOCIATION

My name is James E. Senner. I am Chairman of the Transportation Advisory Committee of the American Plywood Association, P. O. Box 11700, Tacoma, Washington 98411.

The American Plywood Association is made up of 145 member mills in 18 states representing 82% of total industry production. Total 1982 structural panel production was 16 billion square feet (3/8" basis) or 67.6% of industry capacity account national economic conditions.

The purpose of this testimony is to discuss the role of intermodal application of truck-rail-truck or trailer on flatcar commonly referred to in the colloquial term "piggyback".

A CHANGING ENVIRONMENT

Our industry is experiencing a major upheaval in the traditional, historical transportation regulated basis by which we had become accustomed to do business. As a result of enactment of the Staggers Act in October of 1980, railroads engaged in new freedoms which during the past two years has resulted in independent action in tariff and rate publications. Many railroads have published their own tariffs and have developed major initiatives away from joint line rates in order to maximize their business opportunity or market share. Cancellation of reciprocal switching agreements disallowing delivery to a non-line haul participating carrier at destination, within the reciprocal switching limits of that city, are occuring with regularity on the Conrail, Southern Pacific; Atchison, Topeka, and Santa Fe; and Chessie System (C&O/B&O); to name a few. While these carrier are not blanketing their systems with cancellation of this nature, they are attempting to enhance their long haul opportunities through this medium.

During the past two to three years, expedited procedures have been established by the Interstate Commerce Commission enabling railroads to abandon segments of their operations that do not appear to produce an acceptable rate of return. As an example, during the fiscal year of 1981, the Interstate Commerce Commission received 162 applications to abandon 3,223 miles of rail lines. The Commission acted on 140 applications granting 139 and 2,914 miles of rail line. Additionally, the Commission recommended to the Chicago, Milwaukee, St. Paul, and Pacific Railroad Company abandonment of 692 miles reflected in five (5) separate applications by that company.

CONSTRAINT OF USE

The primary limitation in use of piggyback shipment by plywood manufacturers has been availability of flatbed trailers. The rail industry has had very little equipment of this nature available. As an example, the Burlington Northern obtains approximately 150 flatbeds and the Union Pacific only 115 pieces of system equipment. Closed trailers (vans) are generally not compatible with 4' X 8' panels or units of plywood. Inside van widths range from 7'4" to 7'8". It is close to impossible to load a van with our products and achieve vehicle weight that would not economically prohibit our use. Exceptions to this statement might be cut-to-size plywood that dimensionally would be smaller than a 4' X 8' panel and could be tailored to van loading.

LEGISLATIVE ACTION

On July 31, 1979, the American Plywood Association participated in a public hearing held at the Claremont Resort Hotel in Oakland, California. This hearing was conducted by the Department of Transportation and dealt with the subject of "National Limit on Truck Size and Weight." At that hearing,

our association expounded on the need to expand trailer width to 102" and gross weights to 80,000 pounds.

The Surface Transportation Act of 1982 was signed by President Reagan on January 6, 1983, becoming effective April 6, 1983. At present, all states with the exception of Illinois have increased gross weights from 73,280 to 80,000 pounds. Our industry is starting to see the infusion of 102" closed trailers which shall provide the railroads a greater opportunity to balance movement of East and West bound trailers. Due to the vast volume base of plywood and the compatibility with 102" vans the railroad should be able to optimize both efficiency and cost to truly compete with irregular route motor carrier. Piggyback utilization by our industry will allow greater predictability and scheduling reliabilities over the cost escalated motor carrier.

THE NECESSITY FOR INTERMODALISM

Due to these many changes, those mills located in the hinterland and served generally by one origin railroad may seek out piggyback options from other carriers located in a reasonable proximity to his shipping point. Additionally, it may offer an alternative delivery option to a customer that has either been (1) isolated by rail abandonment and completely reliant on the motor carrier option; (2) economically embargoed from doing business via rail lines that no longer access directly the receivers facility account closure of historically reciprocally switched destinations; or (3) competitively isolated from receiving his product other than in traditional boxcars, flatcars, or price escalated truck shipment.

Price deregulation of trailer on flatcar shipment (TOFC) has introduced not only an option to plywood manufacturers but a competitive environment between railroads and even within respective railroad companies. The plywood industry has experienced competitive initiatives between the Southern Pacific; Atchison, Topeka and Santa Fe; Burlington Northern; and Union Pacific Railroad companies. Additionally, a certain competitive environment exists within several of these companies in that the respective TOFC department may compete by price and service with the boxcar/flatcar department of that firm. The railroads finally have achieved a marketing sensibility to extend themselves beyond the scope of their physical rail line and in a manner that they can effect delivery under a cost controlled environment.

Our industry has a great concern over the inability of surface transportation modes to effectively react to an upswung economy. We have been witness to extensive storage programs of equipment, reduction of mechanical forces for upgrading and repairing equipment, and almost total cessation of car building programs by the railroads. Additionally, replacement part inventories have been minimized at both manufacturers and railroad facilities. Once cars are placed in storage and remain there for any period of time, they must be inspected for such matter as brakes, wheel bearings, and air hoses prior to tendering the car at interchange with another railroad.

Hard times have fallen upon the irregular route motor carrier industry as well in that during the past recession many owner operators have gone out of business or could not afford to maintain their equipment. Therefore, there is substantially reduced base of supply of motor carrier alternatives to meet our needs.

In conclusion, piggyback is essential in providing not only an economically competitive alternative to conventional rail and truck movement, but proves to be the only practical alternative to moving our products during the present and very near future.

CONCLUSION OF HEARING

Senator ANDREWS. That concludes this special hearing on Intermodal Transportation Coordination. The subcommittee will recess and reconvene at the call of the Chair.

[Whereupon, at 12:15 p.m., Thursday, March 31, the hearing was concluded and the subcommittee was recessed to reconvene at the call of the Chair.]

O